

The 30(b)(6) Deposition of
Encore, Inc.

Through
EVAN MONHEISER

In the Matter of
EAUX HOLDINGS, LLC
VS
SCOTTSDALE INS. CO.

Taken On
AUGUST 05, 2021



Exhibit 6

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

EAUX HOLDINGS, LLC

VERSUS

CIVIL CASE NO. 2:20-CV-01582
JUDGE: JAMES CAIN
MAG: KATHLEEN KAY

SCOTTSDALE INSURANCE CO.

VIDEOTAPED 30(b)6 DEPOSITION OF
ENCORE, INC., BY REPRESENTATIVE EVAN MONHEISER

(DAY 1 OF 2)

The videotaped 30(b)6 deposition of ENCORE, INC., BY REPRESENTATIVE EVAN MONHEISER appearing remotely via videoconference from Lake Charles, Louisiana was taken in the above entitled cause, pursuant to the following stipulation, before Deborah Villien, Certified Court Reporter, appearing remotely from Lafayette, Louisiana, on the 5th day of August 2021, beginning at 9:08 a.m.

REMOTE APPEARANCES

FOR THE PLAINTIFFS: EAUX HOLDINGS, LLC

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ALSO PRESENT:

MR. CHARLIE QUIROZ, VIDEOGRAPHER

MR. GRANGER STUCK

MR. STEVE DUPLANTIS

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I-N-D-E-X

EXAMINATION:

BY MS. WOLF6

EXHIBITS:

EXHIBIT 1 (STATE LICENSING BOARD LETTER92
AUGUST 3, 2020)

S-T-I-P-U-L-A-T-I-O-N

It is stipulated that the videotaped 30(b)6 deposition of ENCORE, INC., BY REPRESENTATIVE EVAN MONHEISER via videoconference is taken on the 5th day of August 2021, before Deborah Henderson Villien, Certified Court Reporter.

The deposition is being taken pursuant to notice and the Federal Rules of Civil Procedure.

The parties hereto waive all formalities in connection with the taking of said deposition, except the swearing of the witness, and the reduction of the questions and answers to typewriting.

Counsel for all parties reserve all objections, except as to the form of the question and responsiveness of the answer, at the time of taking said deposition, but they also reserve the right to make objections at the time said deposition or any part thereof may be offered in evidence, with the same rights as if the testimony had been taken and given in Open Court.

Before the completion of the deposition, the deponent and/or a party did not request to review the transcript.

1 REPORTED REMOTELY FROM LAFAYETTE, LOUISIANA

2 Thursday, August 05, 2021 9:08 AM

3 THE VIDEOGRAPHER: We are now on the
4 record. Please note that the recordings
5 will continue until all parties agree to
6 go off the record. My name is Charlie
7 Quiroz. The date today is August 5, 2021,
8 and the time is approximately 9:08. The
9 name of the witness is Evan Monheiser. At
10 this time, I would like to ask the
11 attorneys to please identify themselves
12 and the parties that they represent.

13 MR. COX: This is Michael Cox. I
14 represent the plaintiff in the matter,
15 Eaux Holdings.

16 MS. WOLF: This is Mary Anne Wolf. I
17 represent the defendant, Scottsdale
18 Insurance.

19 MR. WOLFF: This is John Wolff along
20 with Mary Anne. I will not be handling
21 the deposition, Mary Anne will, but I am
22 present.

23 THE VIDEOGRAPHER: Our court
24 reporter, Debbie Villien, will swear in
25 the witness and we can proceed.

1 EVAN MONHEISER, called as a witness at the instance
2 of the defendants, after having been duly sworn, was
3 examined and testified as follows:

4 COURT REPORTER: Thank you. I'll
5 need you to speak up just a tad bit, since
6 you're kind away from the microphone.

7 Perfect. Thank you.

8 EXAMINATION

9 BY MS. WOLF:

10 Q. Good morning, Mr. Monheiser. Again, my
11 name is Mary Anne Wolf, and I represent Scottsdale.
12 Before we get started, I want to just go through
13 just a couple of housekeeping matters. You've
14 already said that you have got the two deposition
15 notebooks with binders in front of you. Throughout
16 this deposition, I will refer to the tabs. If you
17 notice, there are tabs there. Those are nothing
18 more than just to help us get to the document. So
19 there's --

20 A. Okay.

21 Q. -- I might say book one or book two or
22 volume one, volume two, and tell you the tab.
23 Inside those tabs it's -- mostly the documents,
24 almost all of them, are the documents that Encore
25 produced. And in the top right will be what we call

1 a Bates number. So for the record, since we're all
2 remote, and to make sure the record is clear as to
3 what documents we are referring to, I will always be
4 calling out those numbers. Also, have you ever
5 given a deposition before?

6 A. No, ma'am.

7 Q. Okay. So some ground rules to help this
8 work well. I will be asking questions. I will tell
9 you upfront sometimes it takes me a while to get all
10 the way to the question mark, finished with my
11 question. Please wait for me to finish, because
12 that makes a cleaner record for the court reporter.
13 She can't take down both your talking and my
14 talking.

15 And then, by the same token, I will then
16 give you a chance to answer. And I will try not to
17 talk over the top of you. Sometimes you anticipate
18 what I'm going to ask, and to try to speed things
19 along, you might be, you know, willing to answer
20 before I finish. But we have to wait for each other
21 to finish questions and answers, okay?

22 A. Okay.

23 Q. The other thing is, if I ask a question
24 that you don't understand, please don't answer that
25 question. Instead let me know that it's not a clear

1 question, and I will try to rephrase it, or clarify
2 it, so that we are on the same page. Is that -- is
3 that good?

4 A. Yep.

5 Q. And the other thing is, and you've
6 already done a very good job, is nodding heads one
7 way or the other isn't going to show up. It will
8 show up on the video, but it won't show up in the
9 transcript. So make sure that you respond with a
10 yes, or a no, or some other words, rather than just
11 nodding heads or saying uh-huh. Is that clear?

12 A. Okay. Yes.

13 Q. Let me start with the deposition notice.
14 If you would go to that first volume, Tab A is what
15 we call the notice of deposition of Encore. Have
16 you reviewed this deposition notice?

17 A. Yes.

18 Q. You understand that you are the witness
19 designated to speak on behalf of Encore today?

20 A. I'm sorry. You kind of cut out there
21 right in the middle of that. Could you repeat that?

22 Q. Yes. Do you understand that you are the
23 representative that's been designated by Encore to
24 speak to each of these topics?

25 A. Yes.

1 Q. Okay. You're prepared to do that today?

2 A. Yes.

3 Q. All right. Also if you notice at the --
4 on page 8, we had a request for documents asking
5 essentially to the extent that you had not already
6 produced your entire file related to this matter,
7 meaning the 620 Esplanade property and that project,
8 that you produce documents. You did give us the
9 natives of the schedules that we had asked for. And
10 I thank you for that.

11 My question is, are there any other
12 Encore documents related to this lawsuit, or related
13 to the property that's at issue here, 620 Esplanade,
14 the Eaux Holdings property, that you have not yet
15 produced?

16 A. No. Everything is in that file.

17 Q. Okay. And I ask that because -- and
18 we'll get through -- when we go to the documents,
19 I'll ask -- I might ask you that again. But I
20 couldn't tell if substantial completion had been
21 reached, or if there were other inspection
22 documents, or perhaps daily logs, that picked up
23 after this date where you may need to supplement.

24 And I understand your answer now is, no,
25 you believe you've given us everything. But I may,

1 when we get into the documents, ask you if there's
2 something else that you might be able to produce.
3 Do you understand?

4 A. Yes, ma'am.

5 Q. But as -- for right now, you don't know
6 of any other documents that you have not produced?

7 A. I'm not aware of any.

8 Q. All right. So let me get some background
9 first. Can you tell me briefly starting from high
10 school where did you go to high school, and what
11 year did you graduate?

12 A. I went to Blue Springs High School for
13 two-and-a-half years. And then I transferred in the
14 middle of my junior year to St. Mary's High School.
15 And I graduated in 2006.

16 Q. Where is that? What town is that in?

17 A. Independence, Missouri.

18 Q. Okay. And after high school, did you go
19 to college, or did you start work, or both?

20 A. I went Kansas City, Kansas Community
21 College for 2 years. And then I went to University
22 of Central Missouri for 3 years.

23 Q. Okay. Do you have a degree from there?

24 A. Pardon?

25 Q. Do you have a degree?

1 A. No.

2 Q. Okay. And then after you left Central
3 Missouri, was that the end of your education?

4 A. Yes, ma'am.

5 Q. Okay. And what did you do after you left
6 there?

7 A. I became -- I started working some
8 part-time work doing some trim carpentry, doing
9 remodels for houses. And then started working part
10 time for Encore during a job that they needed some
11 assistance on. And then I think around between 2013
12 and '15, I became a full-time employee working as a
13 demo supervisor, then as a remediation supervisor.
14 And then I started working running jobs all by
15 myself probably around 2016.

16 Q. Okay. When you started there in 2013
17 until 2015, what was your title?

18 A. Anything they could put me up to.
19 Cleaning, labor, supervisor, just small demo,
20 usually rehab teams of demo. And so I would run a
21 team of six demo guys. And I just supervised, make
22 sure that if anything is going wrong, I'd report it,
23 everything is going right, I'd report it.

24 Q. In 2016 did your position or title change
25 with Encore?

1 A. Yeah, I guess. I just started doing -- I
2 started running jobs essentially as a
3 superintendent.

4 Q. Is that -- what is your position with
5 Encore today?

6 A. Depending. I'm a superintendent, project
7 manager, and could classify as a project director.

8 Q. So in the last, say, 2 years that you
9 have been engaged with Encore, can you give me a
10 brief description of what your job responsibilities
11 are?

12 A. Estimating and direct oversight of
13 superintendents.

14 Q. All right. So that means that when a --
15 when there's a job that Encore is interested in
16 submitting a proposal or a bid on, you are an
17 estimator?

18 A. Yes.

19 Q. So that means that you get pricing from
20 subcontractors and put that together with insurance
21 costs, bond costs, overhead profit, you figure out
22 how much Encore is going to charge for that
23 particular job; is that correct?

24 A. Can you repeat that?

25 Q. Yes. So as far -- what I'm trying to do

1 is just in a nutshell say what your job is as
2 estimating. You get pricing from prospective
3 subcontractors, and then add into that all the costs
4 of the job, like bonding, and insurance, and
5 Encore's overhead and profit, any work that Encore
6 is going to self perform, and you determine how much
7 Encore is going to submit as a price for that work?
8 Is that generally what estimating means?

9 A. Yeah. Yes.

10 Q. And then you said you are director over
11 the superintendents?

12 A. I'm a project manager. I run -- I may
13 run two jobs. I may run three jobs. I may, you
14 know, there maybe three jobs with three
15 superintendents that I just -- I have an oversight,
16 and I usually have communications with on a
17 day-to-day basis. I'm usually not the one that is
18 on site, depending on the job.

19 Q. For this particular job, the Eaux
20 Holdings project at 620 Esplanade, throughout this
21 deposition, can I just call it the project and we'll
22 understand that we are talking about the Eaux
23 Holdings 620 --

24 A. Yes.

25 Q. -- Esplanade property, right?

1 A. Yep.

2 Q. Or I might say this project --

3 A. Yes.

4 Q. -- just for short. So for this
5 particular project, were you the superintendent, or
6 were you the project manager overseeing a separate
7 superintendent?

8 A. I actually was both. I was my own
9 super -- I was my own project manager and my own
10 superintendent.

11 Q. Okay. And did you also estimate this
12 particular project?

13 A. Yes, ma'am.

14 Q. Before I move away from your work
15 history. Have you worked for any other companies,
16 firms, other than Encore?

17 A. No.

18 Q. Okay. And you said you started with them
19 in 2013, or did you actually start prior to that?

20 A. It was around 2013. I can't remember the
21 date.

22 Q. Do you have any type of -- do you hold
23 any license or certifications of any type?

24 A. Can you repeat the question?

25 Q. Yes. Do you have any type of

1 certifications, or licenses, something issued by a
2 state agency? I'm trying to figure out, just in
3 general, what all your areas of expertise are. And
4 in particular any licenses or certificates?

5 A. Encore holds a general contracting
6 license in Louisiana.

7 Q. Does Encore operate in other states as
8 well?

9 A. Yes, ma'am.

10 Q. And what other states?

11 A. Kansas City, Missouri -- sorry.
12 Missouri, Kansas, North Carolina, Texas, and
13 Louisiana, I believe.

14 Q. Does that mean that Encore has a
15 contractor's license in each of those states?

16 A. I'm not sure of that. But as far as
17 having a contractor's license, I'm pretty sure it's
18 Missouri, Kansas City, and North Carolina, and
19 Louisiana.

20 Q. Okay. And are you the qualifying party
21 for any of those licenses that Encore holds?

22 A. I am not.

23 Q. Okay. So back to -- I just want to find
24 out for you personally, do you take any type of
25 continuing education or seminars?

1 A. I do for restoration.

2 Q. Restoration?

3 A. Yes.

4 Q. Okay. And in a particular year, how many
5 hours of continuing education or seminars do you
6 get?

7 A. For the past 2 years, I have not had any.
8 But, I mean, before that, it was just classes,
9 three-day classes.

10 Q. Was that something that was required by
11 any state agency, or by your -- by Encore, or just
12 something that you wanted to do to learn more?

13 A. It was just something that I needed to
14 learn more.

15 Q. Okay. And what is the last seminar or
16 continuing education class that you have taken, what
17 year?

18 A. I can't remember.

19 Q. Okay. Who are the owners of Encore?

20 A. That would be Don Payne.

21 Q. All right. Who are the -- if you know,
22 who's the qualifying party for Encore's Louisiana
23 license?

24 A. I'm not sure.

25 Q. All right. Who do you report to

1 directly? In the last 2 years, who has been your
2 supervisor?

3 A. That would be Aden Monheiser and Don
4 Payne.

5 Q. I'm sorry, the first name?

6 A. Aden.

7 Q. Aden.

8 A. Monheiser.

9 Q. And how is that person related to you?

10 A. That is my brother.

11 Q. All right. Who is Sean Mahoney?

12 A. He is a project manager for my boss'
13 other company.

14 Q. What company is that?

15 A. Purdum Construction.

16 Q. Say it again, please?

17 A. Purdum.

18 Q. Spell it.

19 A. P-u-r-d-u-m.

20 Q. Do you ever work with Sean Mahoney?

21 A. I do not.

22 Q. Okay. Who is -- first name is C, the
23 initial is C, and last name is Shoemaker?

24 A. That is my administrator, Christy.

25 Q. Okay. And she works for Encore?

1 A. Yes, ma'am.

2 Q. And what does the administrator do?

3 A. A lot of paperwork. She may be doing
4 closeouts as far as collecting warranty information,
5 lien releases. She may be reaching out keeping
6 track of W-9s, COIs. She may be filling out
7 estimates for me, or estimate work order sheets.
8 Just kind of a variety of paperwork items.

9 Q. Okay. How many employees does Encore
10 have currently?

11 A. Around 8 to 10.

12 Q. And are they located in Kansas, or
13 somewhere else?

14 A. They are located in Missouri.

15 Q. Missouri. Okay. Is that where Encore's
16 main office is, in Missouri?

17 A. Yeah. Our -- I think our registered is
18 in Kansas, but my office is in Missouri.

19 Q. Does Encore have an office in Louisiana?

20 A. No.

21 Q. Has Encore ever had an office in
22 Louisiana?

23 A. Not that I'm aware of.

24 Q. I saw the name on the letterhead, Encore,
25 Inc. Insurance Restoration and General Construction.

1 Is that the name that Encore goes by?

2 A. Yes.

3 Q. Okay. And can you tell me what is
4 Encore's business? What does that mean, insurance
5 restoration and general construction?

6 A. We handle -- we handle commercial
7 restoration as far as drying, demo, and general
8 construction.

9 Q. Does that mean that the jobs that Encore
10 takes, for example, you're not going to bid a
11 brand-new construction from ground up?

12 A. No, we do.

13 Q. You do. Okay. So do you do any -- do
14 you do commercial work for brand-new builds?

15 A. Yes.

16 Q. Okay. You do design, bid, build type of
17 jobs?

18 A. Yeah.

19 Q. Okay. And do you do that for government
20 agencies? Do you do any of those kind of projects,
21 or is it all --

22 A. Not necessarily. I mean, it depends. I
23 don't know if they are, and/or if some of them have
24 been or not. I'm not sure.

25 Q. Okay. And so the restoration, insurance

1 restoration part of it, we know here for this
2 particular project, that this was a hurricane
3 restoration. Is it -- is it hurricane restorations
4 that Encore does a lot of, or what other type of
5 restorations is it?

6 A. It -- it depends. I mean, it's not just
7 catastrophe restoration. It's -- I mean, really any
8 type. Could be overflowed -- overflowing sinks, it
9 could be --

10 Q. I'm sorry. I didn't understand that
11 word. What did you say?

12 A. It could be overflowing sinks. Anything
13 from overflowing sinks to, you know, fire lines
14 busting -- freezing and busting.

15 Q. Okay. In Hurricane Laura -- when
16 Hurricane Laura hit, how many other projects did --
17 for restoration of Hurricane Laura damage did Encore
18 handle, other than this project?

19 A. None.

20 Q. Okay. What about Hurricane Delta? Did
21 Encore have any Hurricane Delta projects?

22 A. No. Just -- we were just at Eau, or
23 Four-O.

24 Q. Okay. Did Encore attempt to get other
25 Hurricane Laura or Hurricane Delta projects? In

1 other words, did you bid them, or contact owners, to
2 give estimates?

3 A. I did not.

4 Q. Do you know if Encore did?

5 A. No. I'm not aware of.

6 Q. Okay. When you were working on this
7 particular project, when you were the project
8 manager/superintendent, were you working any other
9 jobs in Louisiana in the 2020 through today time
10 frame?

11 A. No. Not that I'm aware of.

12 Q. Okay. This was your only project Monday
13 through Friday all day?

14 A. Yes.

15 Q. So I want to have you walk through and
16 just explain what the restoration construction
17 process is. And start with, for example, in this
18 particular case, there was a hurricane. How did you
19 come to meet Joey Odom, or find out about this
20 particular project? I guess let's start there.

21 A. It was a referral.

22 Q. By whom?

23 A. I don't remember the order that was -- it
24 was either by SRP and/or Skyline. I wasn't the one
25 that initiated that -- that talk.

1 Q. Okay. What is SRP? Who is that?

2 A. It's a referral company.

3 Q. Where are they located?

4 A. I don't know.

5 Q. All right. How do you first become aware
6 of this Eaux Holdings -- sometimes I call it Eaux
7 Holdings, sometimes Four-O.

8 A. It's okay. I got you.

9 Q. Again, we're talking about the same
10 thing.

11 A. Yes.

12 Q. So how did you first come to know about
13 this Eaux Holdings projects?

14 A. I got -- Aden Monheiser contacted me.
15 One of my bosses contacted me about it.

16 Q. Okay. And at that time -- where do you
17 live?

18 A. Kansas City.

19 Q. Okay. Can you give us your home address,
20 please?

21 A. It is 4313 Eastland Center Drive,
22 apartment 712, Independence, Missouri, 64055.

23 Q. All right. So you were there, and your
24 boss contacted you about this particular project; is
25 that right?

1 A. I don't remember my exact whereabouts,
2 but I should have been around the area.

3 Q. Okay. So were you working another
4 project at the time?

5 A. I don't remember.

6 Q. Okay. And what was your instruction?

7 A. They just gave me a call about the job.
8 Said that Aden was going to go down there. And if I
9 could reach out to Skyline to see what they thought,
10 and see if it was a good job for us.

11 Q. Who was your contact at Skyline?

12 A. Jeff Major.

13 Q. Did you ever talk with anybody else about
14 this job, or this project, at Skyline, other than
15 Jeff Major?

16 A. Yes.

17 Q. Who? Who did you talk to?

18 A. Jim Collins, Jade Bentz.

19 Q. Say that last name again.

20 A. Jim Collins and Jade Bentz.

21 Q. Jade? Is it Jade?

22 A. J-a-d-e.

23 Q. Okay. And what -- so who did you talk to
24 initially about this project, Jeff Majors?

25 A. Yes, ma'am.

1 Q. What was that conversation?

2 A. I can't exactly remember. It's just
3 basic details about the building, about the project,
4 about the owner. From what I remember, it was
5 pretty quick. Basically because Aden was going to
6 go down there.

7 Q. Okay. And do you, or Aden, have any
8 notes on those initial meetings with Skyline?

9 A. No.

10 Q. Do you have --

11 A. They were just phone conversations.

12 Q. Just conversations. Do you have anything
13 in writing from SRP, the referral company, about
14 this particular project?

15 A. No. They were just phone conversations.

16 Q. Okay. So what was the next step after
17 Aden came down to Louisiana? Did you come here, as
18 well?

19 A. I did not. He actually -- he actually
20 FaceTimed me once he got here. And so just the
21 FaceTime once he got inside the building. And just
22 kind of looking around at damages and what needed to
23 be done. If this would be a job that we would be
24 interested in taking.

25 Q. Okay. I want to back off from a minute

1 for -- from this particular project and just talk
2 about what the process for Encore is in general on a
3 restoration project. If you could start from that
4 point when you're there at the site, and you're
5 going to walk the site, and determine what the
6 damage is, and whether or not you are going to take
7 the job. Can you just fill me in on what those
8 steps are in general?

9 A. I mean, there is always -- there is
10 always an assessment, moisture readings are taken.
11 I mean, you know, obviously depending on the job,
12 you know, moisture readings are taken essentially to
13 see how much, you know, would be taken out.
14 Estimating for the amount of equipment. And, you
15 know, I mean, honestly usually it does start with a
16 commitment from the building owner. And we usually
17 give a rundown of how the process is going to go
18 from start to end.

19 And then usually once that commitment is
20 made, we will spend about a day or so moisture
21 mapping, making demo plans, trying to account for
22 where everything is at, and how it's going back
23 together. And so we want to make it -- make it easy
24 for us and/or somebody else that may come in to
25 rebuild. We want to make it easy for them to be

1 able to put everything back together. So we do make
2 a -- some sort of demo plans.

3 And about, you know, the day or so after
4 that, we do bring -- start to bring in equipment.
5 Again, this is just kind of a generalized schedule.
6 Bring in drying equipment, bring in a demo crew, and
7 bring in a cleaning crew right past -- right behind
8 them. Usually demo timeline -- there is not
9 necessarily a timeline, depending on how big the job
10 is. You know, everything is -- once all demo is
11 done, cleaned up, everything is dried, we do, like,
12 dry logs. We do moisture maps. Kind of submit
13 everything in a nice little packet and send it off
14 to the owner.

15 Q. Okay. And that package that has the
16 drying logs, the moisture maps, did you say demo
17 plans are included there?

18 A. Yes.

19 Q. Okay. Was that provided in this case to
20 the owner of Eaux Holdings?

21 A. Not that I'm aware.

22 Q. No, it was not?

23 A. Not that I'm aware. We didn't do it, so
24 I don't -- I'm not sure what was provided to him.

25 Q. Okay. So what you're discussing there,

1 would that fall into the category of mitigation? In
2 other words, initially after the loss of the
3 hurricane, or the flood, or whatever it is, you go
4 in and do some cleanup?

5 A. Yes.

6 Q. Okay. So you -- Encore did not have that
7 mitigation aspect for this particular Eaux Holdings
8 project; is that what you're saying?

9 A. Correct.

10 Q. Then going back to just in general what
11 Encore steps are. After you get the commitment from
12 the owner, and you prepare this package for the
13 owner, what is the next step?

14 A. Again, that's the moisture mapping,
15 identifying walls that need to be removed, how much
16 of that wall needs to be removed. Whether it's --
17 again, documenting what kind of wall that it is.
18 All of those things are figured out by colors on
19 blueprints, or whether you're sketching the room
20 out, or the building out, yourself.

21 And so it's really -- after that it's
22 demo and documentation and drying. You are making
23 sure that whenever you put things back, or if
24 somebody else is going to put things back, it's
25 going back the same way that it was originally --

1 it's going back the same way that it was originally
2 before the damage.

3 Q. Okay. And when you are -- when Encore is
4 doing this work, are you cognizant of the fact that
5 a lot of times there is going to be insurance
6 coverage involved for whatever the loss is?

7 A. Depending.

8 Q. And does that play into your decisions
9 about putting things back the way they were
10 originally, as opposed to, you know, tearing
11 something out and doing something different? Are
12 you cognizant --

13 A. Those aren't -- those aren't decisions
14 that are left to me or anybody in our company.

15 Q. Okay. So now you are to the point in the
16 process where you have done demo, all the demo that
17 you've determined is necessary, and things are dried
18 out. So what is the next step to start the
19 reconstruction? What is Encore's next step after
20 the mitigation part is done?

21 A. I guess you would say that there's also a
22 drying in factor. You usually like to dry in while
23 you're drying out. There's no point in drying if
24 it's going to get wet again. So, you know, you want
25 to make sure that your building is dried in. And

1 depending on damages, it might go from tarping a
2 roof to Saran wrap an exterior, setting up a -- some
3 sort of exterior perimeter for -- to limit water
4 coming in.

5 And so usually after that step, we do
6 start to -- if the owner is interested in having us
7 do the estimate, we will start some preliminary
8 requirements at that point. Reaching out to the
9 owner to see if they have design professionals that
10 they would prefer to use.

11 Q. Okay. So the step that you just talked
12 about there is -- in addition to the drying out, is
13 starting to do what you have described as temporary
14 waterproofing measures around the envelope, the roof
15 and the walls, to make sure more water is not coming
16 in. But those are temporary measures, correct?

17 A. Yes. That would be -- that would
18 technically be the drying in phase. I mean, if it's
19 something easy, you can fix it, if it's not, then
20 you need to take temporary measurements.

21 Q. Okay. And when you are doing this work
22 all the way -- the initial mitigation and the drying
23 in factor, do you itemize and break down this scope
24 of work with pricing? Is that something that you do
25 and give to the owner so they know exactly what the

1 tasks are, and how much is this -- how much cost is
2 assigned to each task?

3 A. Can you repeat that? There was lot in
4 the beginning of that.

5 Q. Yes. So we are now talking about the,
6 you know, the mitigation phase and the drying in
7 phase. Do -- does Encore itemize this work, and the
8 associated cost for that work, like on a piece of
9 paper or something to give to the owner to say, this
10 is what we're going to do, and this is how much it's
11 going to cost?

12 A. For -- is this -- is this part of the
13 drying out?

14 Q. Yes. The initial mitigation and the
15 drying out.

16 A. It depends. Large jobs, they are
17 difficult to estimate. Smaller jobs you can kind of
18 give a rough amount. But, I mean, usually depending
19 on the insurance situation, you know, the client may
20 ask for an estimate. Which again, they can take a
21 while to get those -- that kind of estimate in. Or,
22 you know, it's assigned and, you know, as much as we
23 want to -- you use the right stuff, you use the
24 right equipment, you are not going to have problems
25 with insurance companies as far as fight back on

1 costs.

2 So they are aware of -- typically aware
3 of, you know, the cost for equipment, cost for
4 manpower. We will submit a -- usually a rate sheet
5 for our restoration work. And so they have a
6 generalized estimate of how much labor costs, how
7 much equipment costs.

8 Q. Okay. So what is the next step after
9 drying in? You mentioned that now you are to the
10 place where you have to decide if the owner has
11 certain design professionals that they want to use
12 to prepare plans and specs for the restoration or
13 the rebuild work, or whether or not they want you to
14 handle that; is that right?

15 A. Usually it's them. Again, you -- we want
16 to make sure that if they have somebody that's in --
17 that they would prefer to use, then we would prefer
18 them to use the -- their own design professionals.

19 Q. Okay. So once you got the design
20 professionals on board -- of course, it's going to
21 take some time for those design professionals. They
22 have to come back and bid, correct, and then prepare
23 the plans and specs for the rebuild; is that right?

24 A. Yes.

25 Q. Okay. And then -- so tell me if I'm

1 wrong here. I'm assuming that you're not just
2 waiting around for the design professionals to give
3 you a final set of stamped plans. That during that
4 part of the work, you are also estimating and trying
5 to get subs lined up; is that correct?

6 A. Yes.

7 Q. Okay. So those two things can happen
8 simultaneous, but you have to have -- that's a yes,
9 right?

10 A. Yes.

11 Q. But in order to actually go out and build
12 the work, you do need a design professional to
13 complete the plans and specs, right?

14 A. Not necessarily. Depending on what you
15 are doing. There's, again, design professionals
16 range from architects to interior designers. Items
17 may be strictly, you know, like, putting up drywall
18 or, you know, items like that, they may not require
19 anything. But, you know, you want to have the paint
20 color. So, you know, in those circumstances, I
21 mean, it wouldn't -- you know, you don't need any
22 some sort of approval from anybody to do those.

23 Q. Okay. And so what you just said is
24 you're obviously going to have the owner and the
25 tenants that have to give their final approval of

1 selections of materials, whether --

2 A. Yes.

3 Q. -- it's colors, all of that has to happen
4 in order for you to order the materials, correct?

5 A. Yes.

6 Q. You leave time for all of that?

7 A. Yes.

8 Q. Do you have to get -- submit the work to
9 the authority having jurisdiction, whether it's, in
10 our case in Louisiana, it's a parish. Does Encore
11 handle getting the approvals and the permits from
12 the parish, or the authority having jurisdiction?

13 A. Again, it depends on scenarios.

14 Q. All right. Let's go to this particular
15 project, the Eaux Holdings project. Did Encore
16 handle submissions to the parish approvals and
17 permits?

18 A. No.

19 Q. Okay. Who handled that aspect of it?

20 A. I don't think anybody did.

21 Q. Was the -- the work that was done at the
22 Eaux Holdings project, did any of it require
23 submission and approval to the authority having
24 jurisdiction?

25 A. At the beginning, no.

1 Q. And then at some point, did that change
2 and submissions to the government agency were
3 required?

4 A. It depends on the item, the itemized --
5 it depends on the item that you are completing.

6 Q. So, for example, in the Eaux Holdings
7 project, there was ADG, the engineer, redesigned
8 some of the air conditioning system, put their stamp
9 on the plans, they issued a preliminary set, and a
10 final set. Did that work have to go for approval
11 from the parish?

12 A. That did not go to approval due to the
13 fact that we started it before they were done with
14 their -- with stamped drawings.

15 Q. So you're saying the stamped plans that
16 ADG did for air conditioning were never submitted to
17 any of -- any government agency for approval?

18 A. We started the work before the work --
19 before we got that -- their stamped drawings.

20 Q. Okay. And how did that happen? Were you
21 getting -- were you basing it on their preliminary
22 design?

23 A. They had a sketch out, yes. And we
24 reached out to the subcontractor which handled the
25 majority of this. Reached out to Mitsubishi, and

1 Mitsubishi overrode a lot of the things that the
2 engineer -- from what I could see from one
3 submittal, that Mitsubishi versus ADG wrote. There
4 were differences. And it looked like the
5 subcontractor went based upon the submittals that
6 were submitted by Mitsubishi.

7 Q. When you were saying the word submittal
8 there, you're talking about shop drawings, right?

9 A. Submittals, equipment. You know, we're
10 going to use a three ton or a one ton ceiling
11 cassette versus a one-and-a-half ton ceiling
12 cassette.

13 Q. Let me have you look in book one, or
14 volume one at Tab -- I believe it's Tab E3. Yeah.
15 Okay. So this is Encore -- the Bates number is
16 Encore 103. Do you see that at the top right?

17 A. Yes.

18 Q. And actually for the record, let me go
19 ahead and call out the entire Bates number. It's
20 Encore 103 through 103.08. This is a proposal by
21 BE-CI, correct?

22 A. Yes.

23 Q. Did Encore contract with BE-CI?

24 A. Yes, we did.

25 Q. And what was their scope of work?

1 A. Exterior work.

2 Q. Did that include exterior walls?

3 A. Yes. It included elevations and windows.

4 Q. All right. So this is dated October 16,
5 2020, correct?

6 A. Yes.

7 Q. All right. And it says, Dear
8 Mr. Monheiser, thank you for the opportunity to
9 provide a proposal for your project -- referring to
10 the Four-O -- or the Eaux Holdings project. Do you
11 see down in the third paragraph, it says, BE-CI they
12 are prepared to schedule their services after
13 receiving an executed agreement or a notice to
14 proceed. Do you see that?

15 A. Yes.

16 Q. It's in the third paragraph?

17 A. Yes, I'm sorry. I see it, yes.

18 Q. Look at the next page, which is Encore
19 103.02. Under 1.2 it says, BE-CI will perform a
20 visual nondestructive survey of the exterior walls
21 and windows of all four elevations. Did BE-CI do
22 that?

23 A. Yes.

24 Q. And then under --

25 A. I believe yes.

1 Q. Okay. Under 1.3, they said they were
2 going to develop restoration documents. And they
3 did that?

4 A. That's a broad term.

5 Q. Well you're right. Let's look down at
6 their scope, 1.3.1 and 1.3.2 under -- it's A, B, and
7 C. It says you're going to -- their scope included
8 removal and replacement of the exterior wall
9 cladding; is that correct?

10 A. Yes.

11 Q. All right. Removal and replacement of
12 damaged windows; is that correct?

13 A. Yes.

14 Q. And removal and replacement of exterior
15 perimeter sealants at the windows; is that correct?

16 A. Yes.

17 Q. They developed a set of construction
18 plans that discussed these three items; is that
19 right?

20 A. Yes.

21 Q. Is all that work done as of today?

22 A. Parts of it.

23 Q. What's not done?

24 A. The -- I would guess that the -- it
25 changed.

1 Q. Okay. What -- then tell me what did
2 BE-CI, what was their original plan, and how did it
3 change?

4 A. The original plans were to attempt to --
5 this has to do with the windows -- to attempt to
6 find components that we could use to make -- I guess
7 to serve as substitutions for what was there. And
8 that's the item that changed.

9 Q. Okay. Let me back up a minute. And I
10 understand that Hurricane Laura caused broken glass,
11 broken panes from the exterior windows, correct?

12 A. Yes, there were broken windows.

13 Q. Do you know about how many?

14 A. Could you define broken? Would you call
15 cracked broken?

16 Q. Yeah.

17 A. Okay. Maybe seven or eight. I'm not
18 exactly -- seven, eight.

19 Q. That's fine. I was just trying to get a
20 ballpark.

21 A. Yeah.

22 Q. So there were cracked and broken glass.
23 Was there other damage from Hurricane Laura to the
24 exterior -- to the windows?

25 A. Yes.

1 Q. Okay. And what was the Hurricane Laura
2 damage to the windows, other than the broken glass?

3 A. The portion of the roof that blew off of
4 the building scraped down the side -- I guess, I
5 think it's the west side of the building -- and
6 scratched all the components, including the glass
7 and components. And there were areas where the
8 mullions, the vertical mullions, the little black
9 pieces that you see that are from the outside, those
10 were dented in.

11 And there was a area that was on the west
12 side of the building. And I believe it's kind of
13 the north end of that where the windows at a mullion
14 were pushed in at the top. I -- again, I would say
15 the cap flashing, head flashing, a lot of those
16 items were bent, scratched. Yeah, I think that's --

17 Q. Okay. So back to BE-CI's original plans
18 that they issued. I see that there was a 90 percent
19 draft issued on November 24. Does that sound right?

20 A. I'm not sure of the exact date, but that
21 sounds right.

22 Q. So what was that original set that BE-CI
23 came up with? What were they going to do with the
24 windows?

25 A. It was essentially begin to try to find

1 components to replace parts of the windows. There
2 were missing components on the inside of the
3 building.

4 Q. And do you know if the parts that were
5 missing on the inside of the building, was that
6 Hurricane Laura damage, or was that from something
7 else, if you know?

8 A. I have no idea.

9 Q. Okay. So just because I called out that
10 date, if you would look at Tab F3. This is Bates
11 number Encore 49. It's just the first page of their
12 specs. I'm sure we didn't print them all,
13 Mr. Monheiser, because it was such a large --

14 A. Yes, it's fine. You just didn't get the
15 submittals.

16 Q. Right. And I think that was the whole
17 point, was just as a placeholder --

18 A. Yeah.

19 Q. -- and not print the whole thing. But
20 this is dated November 24, 2020, correct?

21 A. November 24, 2020, this one is.

22 Q. Okay. And it's a draft 90 percent set,
23 correct?

24 A. Yes, ma'am.

25 Q. All right. So at this point, the

1 engineer -- are they architects or engineers; do you
2 know?

3 A. Dorsey is an engineer.

4 Q. Okay. So at this point the engineer had
5 not completed a set for construction for the
6 exterior walls and windows, correct?

7 A. Correct.

8 Q. Which mean that didn't -- you couldn't
9 order any materials at this point, right?

10 A. I mean, not necessarily.

11 Q. Did you have the information you needed
12 from BE-CI to -- if they had not yet finalized the
13 design for the windows and the walls, did you --
14 were you able to order anything?

15 A. Yeah. We knew the products that we were
16 going to use and the quantities of product that we
17 were going to use.

18 Q. Okay. So at this point on November 24,
19 you knew the product that BE-CI had chosen?

20 A. It was -- it was our product. It was a
21 product that the owner and I discussed.

22 Q. Okay. That's what I'm trying to figure
23 out is, did BE-CI, did their plans and specs ever
24 show what actually is built, or what's getting built
25 out there today?

1 A. Yeah. Yes.

2 Q. Okay. And so is the current plan -- tell
3 me, is it to keep -- essentially keep the window
4 system the way it is, or is it a replacement of the
5 window?

6 A. Replacement of the window system.

7 Q. Okay. And did -- when you started out
8 with that work, was it to just replace certain
9 mullions and glass?

10 A. It was to replace, yeah, mullions, stops,
11 caps, and, yeah, wet seal interior and out.

12 Q. That was the original scope?

13 A. Yes.

14 Q. Okay. And I just want to make sure I
15 understand. I'm certainly not trying to put words
16 in your mouth. But I'm trying to visualize
17 something that you know very well, and I'm
18 struggling to try to --

19 A. That's okay.

20 Q. -- move ahead.

21 Originally the scope was to replace
22 cracked broken glass, scratched glass, dented
23 mullions, scratched mullions, but essentially keep
24 the same system, but just replace all the damaged
25 components. But that changed to a full replacement

1 of the window system; is that --

2 A. Yes. In a way it did.

3 Q. Okay. Can you --

4 A. In broad terms, yeah. There's a lot more
5 to it than just saying you're fixing parts.

6 Q. Okay. And then since I -- says it sounds
7 like I didn't say it exactly correctly, but I wasn't
8 wrong either, would you -- rather than me putting
9 words in your mouth, would you tell me what the
10 original plan was for BE-CI, or for anybody? What
11 was the original scope of work for the windows, and
12 what is that -- how did it change? What are you
13 going to do today?

14 A. It -- we basically we're working around
15 making the exterior paneling system -- we were
16 basing the design around the fact of being able to
17 take the panels off to replace the windows at some
18 point. And we'll call this, you know, Path A and
19 Path B. And so at -- some of these items we were
20 already gearing towards a Path B of trying to make
21 things work.

22 And so that's what -- that's where we
23 went with that, was trying to find window components
24 that we could exchange. And essentially where that
25 changed was whenever I think I -- I can reference

1 the fact whenever I was discussing the window
2 damages at the project. The west side had an area
3 where it was pushed in, it was maybe a 3-foot area.
4 I can't exactly remember. But there is a CMU wall,
5 a cinderblock wall, that is behind there. So we
6 have to repair that -- that window.

7 But we can't get to the window because
8 there is a cinderblock wall there because there are
9 holding cells behind there. These -- this is a
10 horizontal ribbon window system. You take the
11 components out from the inside of the building. So
12 there is no way for us to get to that to move it --
13 you know, to back out, unless we had to break a
14 window. And then once we break a window, then we
15 have no way of replacing the window because there is
16 a cinderblock wall behind there.

17 We had to take out door -- the window
18 stops, which are also located on the inside. So
19 once we took out -- once we broke the window, fixed
20 it, we had no way of replacing that window. So we
21 ended up taking about 15 or -- I think about 10
22 windows out and actually putting -- framing in. And
23 that was -- at that point, we realized that there is
24 not a lot that we can do with the existing window
25 system.

1 I also spent -- geez, maybe a week --
2 probably 40 to 60 hours on trying to find window
3 components, calling aluminum warehouses,
4 manufacturers, trying to find something that is
5 similar in design to the stops and the components
6 and the mullions. And we couldn't find anything.

7 We had Lake City Glass stop by. They had
8 the mullions and the stops for a couple of weeks.
9 They called said we can't find them. I think
10 Colonial Glass stopped by and said something
11 similar. And so at that point, we knew that there
12 is no way that we could repair the areas. And so I
13 actually ended up buying flat -- aluminum flat stock
14 and caulking it over the damaged mullions to
15 suffice.

16 Q. Okay.

17 A. Until all of these -- until everything
18 kind of worked itself out, and we actually to able
19 to have time to work out on a window system that
20 would suit the building.

21 Q. All right. So --

22 A. That's when it turned. And I apologize
23 for the long explanation. It's just there's a lot
24 more to it than even that.

25 Q. Okay. So with that explanation of the

1 attempts to replace the damaged component, and have
2 the building back the way it was before, I think
3 what you're saying is that became not workable, or
4 not feasible. So tell me then what happened. Was
5 there a decision to make a full window replacement
6 of the entire system and go to a different system?

7 A. Yes. And that was in the middle of a --
8 that was in the middle of the construction of doing
9 our exterior paneling work. And so I -- again I was
10 assisting with Dorsey with how we were going to
11 arrange the panels, how we were stacking the panels
12 on the outside.

13 On the building, if you go there, you may
14 realize that there are some face fasteners that are
15 underneath the windows and above the windows that
16 hold up some of the panels of the design that
17 Nichiha provides themselves. I used that for those
18 areas so that we could take those panels off, we
19 wouldn't have to use clips. And so that we could
20 take those panels off to change out the windows.

21 I was always under the impression that --
22 I had a gut feeling that we were not going to be
23 able to change out those components. But at that
24 point, we were going to try anything that we could
25 do to change those out.

1 Q. Okay. Who is Dorsey? I don't know who
2 Dorsey is, or who Dorsey works for? You said the
3 name Dorsey.

4 A. I'm sorry. She's the engineer. I'm
5 sorry. She's the engineer.

6 Q. Okay. So I got it that the decision was
7 made to replace the window system. Can you just
8 tell me what system are you going with? What is it?

9 A. The -- I think it's an EFCO FX45, that's
10 the name of it.

11 Q. That's the system. And do you know if in
12 your document production you have given us the
13 submittals or shop drawings that show that window
14 system?

15 A. We have submittals of that window system,
16 and they are in your documents.

17 Q. And is that also -- did BE-CI wind up
18 putting that system, that window system, in their
19 final documents?

20 A. Yes.

21 Q. Okay. And what is the status of that
22 work? Is that -- are the new -- is the new window
23 system on order, or it's been delivered?

24 A. No. It is not -- we are -- we are still
25 designing -- again, it goes beyond the -- this is

1 the design, and we're going to order the components.
2 These things are built on site, coordination with
3 our -- with the tenants. But there is also a
4 variety of components that come with each of these
5 windows.

6 And we have to have -- we have to make
7 sure that the caps that go on the bottom are the
8 right dimensions to go over the panels. We have to
9 have extended -- essentially extended mullions. We
10 need to figure out sizes. The building has pillars
11 25 feet on center. And we need to be able to stop
12 with mullions at those pillars and start. So we
13 can't necessarily have prefabricated windows. And,
14 you know, there's a lot more to it than here is
15 windows, here are the drawings, here you go.

16 A lot of this stuff is fabricated on the
17 job site. And so those are the little items that we
18 want to make sure that, you know, if we -- we may
19 not -- one of the windows, instead of being 4-foot
20 10, it may be -- have to be 5 feet, or it may have
21 to be 4-foot, or 4-foot 8. And so we have to have
22 those components. And, you know, if we have to put
23 up a piece of plywood to cover that up until we can
24 get the glass in stock, then, you know, those are
25 items that we're going to have to do. So it just

1 takes quite a bit of planning.

2 Q. All right. So what you have described is
3 a pretty complex design process where there is a lot
4 of back-and-forth in the field between the
5 contractor, that's you, and the designer. As you
6 said, it's more than just spec'ing out a new window
7 system. There's a lot to try to make sure these
8 components are going to go together, and that it can
9 be retrofitted to this building, this 1976 building,
10 right?

11 A. Correct.

12 Q. Okay. And --

13 A. Any the building pillars.

14 Q. Right. Okay. And is this -- has any of
15 the work actually started in the field, or you said
16 y'all have not even ordered the system yet, right?

17 A. No. We have not ordered the system.

18 Q. Okay. But what's there now is all dried
19 in, and the windows are done? I mean, there's no
20 tarp or anything over the windows? There is windows
21 there now?

22 A. Correct.

23 Q. Okay. Is changing out this window
24 system, is the first floor tenant aware that that
25 work is going to happen?

1 A. Yes, ma'am.

2 Q. And the first floor tenant is there now,
3 they have moved back into the building, right?

4 A. Yes, ma'am.

5 Q. Okay. And that's not going to impact --
6 when Encore does that work and changes out those
7 window systems, that first floor tenant is going to
8 be able to remain in the building?

9 A. We have had discussions with them about
10 what would have to be done. The coordination with
11 that is, we would like to do it 25 -- again, the
12 pillars are 25 feet on center. So we would like to
13 accomplish 25 feet first floor and second floor in
14 between each pillar at a time. And so, you know,
15 they may have to move over to another office, you
16 know. There's -- yeah, so in coordinating they will
17 be able to work there.

18 Q. Okay. And do you know if changing out
19 the window system to a new system, is there any
20 impact to the owner being able to lease out the
21 second floor?

22 A. Other than the missing components that
23 don't look the same on the inside.

24 Q. Do you know of any tenant who -- on the
25 second floor, any prospective tenant, who did not

1 sign a lease because the windows were going to be
2 replaced to a new system?

3 A. I have no -- I don't know.

4 Q. Is there --

5 A. I haven't had discussions with them on
6 that.

7 Q. Okay. There's no reason why a second
8 floor tenant couldn't make the same type of
9 accommodations that the first floor tenant is going
10 to make when Encore goes to do the window
11 replacement, right?

12 A. Correct.

13 Q. I saw that the final set of plans through
14 BE-CI came in on June 24. Does that sound right?
15 And you can look at Tab F6. And for the record, let
16 me go ahead and say Tab F6 is Encore 50, which
17 again, is the first page of the specifications.
18 Because the specifications are a very large set of
19 documents. That Encore 50 is dated March 26, 2021,
20 correct?

21 A. March -- yes.

22 Q. All right. And is this the final, or the
23 last, set of specifications you got from BE-CI on
24 this?

25 A. Let me see here. I'm not -- I'm not sure

1 exactly.

2 Q. Okay. Well --

3 A. It looks like it. I'm not 100 percent
4 sure.

5 Q. Okay. But Encore has produced all of its
6 documents. So whatever is latest set is in your --

7 A. Yes, it should be in there.

8 Q. All right. And if you turn to the next
9 page in Tab F6. I know it's very difficult to read
10 the Bates number, but it's Encore 50.82. That is
11 the set of stamped plans from BE-CI, that's the
12 first page. And if you look -- I know you're not
13 going to be able to see it, but there's a stamp in
14 the bottom right. I don't know if you can tell. I
15 blew it up in a PDF, so that date is June 24, 2021.
16 Can you see that?

17 A. What was that stamp? What was that date?

18 Q. Yes. On the first page of the plans, the
19 exterior restoration plans, by BE-CI?

20 A. Yeah.

21 Q. If you look at the bottom right there is
22 a stamp from the design professional.

23 A. What's the heading of -- what did you
24 guys label that document as?

25 Q. It's Encore 50.82. You have to look for

1 that Bates number in the top left. It's very small.
2 Turn back to the first page that has the picture,
3 the birdseye view of the building. There is a
4 bigger date if you go to sheet A1. The plan
5 sheet --

6 A. I see A2.

7 Q. Yeah, any of those. You'll see that the
8 date on this is June 15, 2021, right? Over in the
9 title block.

10 A. Let me see here.

11 Q. Are you looking at the BE-CI set of
12 plans?

13 A. Yes. I'm look at the document labeled
14 50.82.

15 Q. Oh, okay. That's the first page of the
16 plans. So if you look at the bottom right, you'll
17 see the engineer stamp.

18 A. Yes.

19 Q. I don't know if you can read it. But
20 he's got a date on his stamp, and it's June 24,
21 2021.

22 A. Yeah, maybe. Yeah.

23 Q. How about flip the page to the page A1
24 and you can see in the title block the date there is
25 June 15, 2021, right? Down right where the page A1

1 is, right above it, there is a date.

2 A. Yes.

3 Q. Right. So that was less than 2 months
4 ago. Do you recall getting this as the final set of
5 plans from BE-CI for the exterior restoration?

6 A. Yeah. I -- yeah.

7 Q. And this is what you're working from,
8 this set of plans?

9 A. Yes.

10 Q. Okay. So for the record, that's
11 Encore -- the first page is Encore 50.82 through --

12 A. Or whatever their last -- their last
13 plans that were submitted.

14 Q. Okay.

15 A. And it should be -- whatever their last
16 one is, that's the ones that we work off of.

17 MS. WOLF: Okay. So for the record,
18 what the witness is looking at, and what
19 we have been referring to, is Encore 50.82
20 through Encore 50.91. That is a
21 construction set by -- produced by BE-CI
22 for the exterior restoration. And it's
23 dated June 2021.

24 BY MS. WOLF:

25 Q. I think you said this already. Encore

1 contracted with BE-CI, correct?

2 A. Yes, ma'am.

3 Q. And have -- have you paid all of their
4 invoices to date?

5 A. Yes, ma'am.

6 Q. Have you produced all invoices for any
7 consultant or subcontractor that Encore used on this
8 project? Have you produced all contracts and all
9 invoices?

10 A. That -- all invoices and contracts that
11 they sent me, I believe that I have. Hard to
12 believe that I have to beg for people to send me an
13 invoice, but I do.

14 Q. Okay. We talked a lot about the windows.
15 I'm hoping that the exterior wall panels won't be as
16 long of an explanation for you. But essentially my
17 understanding is that the exterior wall panels, that
18 there were some of them that were damaged by the
19 hurricane. But the decision was that all exterior
20 panels on all four exterior walls needed to be
21 replaced; is that right?

22 A. Yes.

23 Q. Okay. And did that work occur?

24 A. Yes.

25 Q. It's done?

1 A. Yes.

2 Q. All right. It's been accepted by the
3 owner as finished?

4 A. I believe so, yes.

5 Q. So I want to look at F -- Tab F4 and talk
6 about Associated Design Group for just a second.
7 Did Encore contract with Associated Design Group, or
8 ADG?

9 A. What was that tab? Can you repeat that,
10 please?

11 Q. It's F4.

12 A. Yes.

13 Q. All right. So my question was. Did
14 Encore contract with ADG?

15 A. Yes.

16 Q. What was their scope when they were
17 originally hired?

18 A. I can't remember. I think it was four or
19 five -- a number of individual offices having a mini
20 split unit.

21 Q. I'm sorry. So let me back up a minute.
22 Maybe I didn't ask a good question. What Hurricane
23 Laura damage was there to the HVAC system?

24 A. I'm not sure. I'm not a mechanical guy.
25 I'm not 100 percent sure what damage was caused.

1 Q. Okay. Why did Encore hire ADG, a
2 mechanical engineer? Were they hired to look at the
3 HVAC system?

4 A. They were hired to design a portion of a
5 new system.

6 Q. Okay. And so the new system was not a
7 replacement for hurricane damage, it was a separate
8 improvement, or upgrade, that the owner wanted?

9 A. Yes, ma'am.

10 Q. Okay. So I think that I understand that
11 the entire first floor HVAC system was replaced; is
12 that right?

13 A. No.

14 Q. No. So what -- tell me what work ADG
15 did. What was the design scope?

16 A. It was a -- originally started out with
17 ten -- again, a certain amount of ceiling set units.
18 And then it did expand into more -- we discussed
19 splitting it up into phases. And it was around the
20 time that we started discussing about how to split
21 this thing up into phases. That's when the
22 mechanical contractor stepped in. And I think they
23 sent him a handful of drawings and equipment. And
24 so, again, I think it was maybe ten ceiling cassette
25 units.

1 Q. Okay. Let me --

2 A. And then it went to 13.

3 Q. All right. So who was the mechanical
4 subcontractor? Who was your sub?

5 A. Industrial Refrigerant Corporation.

6 Q. All right. These plans that we're
7 looking at in F4 are dated February 2021. And
8 again, for the record, that's Encore 40-40.09.

9 And you said Encore hired ADG, and this
10 was to do a redesign of the HVAC system, correct?

11 A. Yes. In phases.

12 Q. In phases. Was it for both the first and
13 second floors?

14 A. Is varied depending on topic. But, yeah,
15 it was a -- it was eventually going to take out the
16 entire building.

17 Q. And it was separate from any insurance
18 damage. This was an upgrade that the owner wanted
19 to the HVAC system, correct?

20 A. Yes.

21 Q. All right. So the cost for ADG as a
22 designer to do this work isn't something that the
23 owner would be looking for its insurance company to
24 pay for, that's your understanding, right?

25 A. I can't speak for them.

1 Q. But you are telling me that this was done
2 as an improvement that the owner wanted, not to put
3 the HVAC system back the way it was before, correct?

4 A. Correct.

5 Q. Did Encore track the costs for things
6 that were not going to be sent to the insurance
7 company separately from the things that were? In
8 other words, covered versus non-covered -- insurance
9 covered items?

10 A. Yeah. I did it in a way to attempt to
11 keep track of -- I did it in change orders on a
12 change order sheet. And so I think I had separate
13 items for some insulation items, which those are all
14 referable in to the project folder.

15 Q. I'm sorry. You cut out a little bit.
16 You said they're all in the project folder?

17 A. Yes, ma'am.

18 Q. Okay. So if I want to see how Encore
19 tracted items of work covered by insurance, or that
20 you thought that were covered by insurance, versus
21 those that you knew were not covered by insurance,
22 that is all done through looking at the change
23 orders?

24 A. I don't track insurance versus non. I
25 bid the job.

1 Q. Okay.

2 A. I was asked if I could split out items
3 that were not insurance related, so that's what I
4 did.

5 Q. Okay. And who asked you to do that?

6 A. I can't remember.

7 Q. Was it in -- was the request in writing
8 or something verbal?

9 A. It was verbal.

10 Q. Do you know if it came from the owner, or
11 from Skyline, or from somebody else?

12 A. I honestly cannot remember. It was just
13 a discussion of if we want to do this. It may have
14 been with the owner. But I am not sure. I can't --
15 I can't remember. And maybe discussions were to do
16 some insulation, and then I would just make a change
17 order for the difference. Again, I can't remember
18 exactly how everything went down.

19 Q. You're talking about insulation. Are you
20 talking about insulation on duct work, or the roof,
21 or the walls, or what?

22 A. On walls. That's the first one I had
23 reference to.

24 Q. Walls?

25 A. Yes.

1 Q. Because there was an upgrade to the
2 insulation in the walls, right?

3 A. Depending -- some walls, yes, other
4 walls, no.

5 Q. Okay.

6 A. It was in between rooms where we added
7 insulation on the center part.

8 Q. So if I understand your testimony
9 correctly, Encore did not officially track, or keep
10 an accounting of, insurance covered scope versus non
11 insurance covered scope?

12 A. No. I did not bid the job based upon
13 insurance items.

14 Q. Okay. But, for example, the cost for
15 ADG, the engineer to design the upgraded HVAC
16 system, you would agree that that is something that
17 should be broken out, if it's not going to be
18 covered by insurance, right, if it's an HVAC
19 upgrade?

20 A. I don't -- that sounds right. I don't
21 know.

22 Q. Okay. Do you know if your -- if the cost
23 for ADG, the engineer who designed the upgraded HVAC
24 system, is that included in any of your change
25 orders where you were tracking some of those items?

1 A. I'm not sure. It was probably added at
2 some point. I can't remember. It's accounted for
3 one way or the other.

4 Q. All right. And then lets look at Tab F5,
5 which is the ADG set of plans, that's what they call
6 their construction documents. Do you see that? So
7 Tab F4 was the design development set, that was in
8 February of this year. And Tab F5 is the
9 construction set dated April 2021. Do you see that?

10 A. I've got 43.008 as the next one F5-- or,
11 sorry, I guess it would be F6. It's less than -- I
12 don't have -- there is no coverage sheet on it.

13 Q. Are you looking at Tab F5?

14 A. Yes.

15 Q. Okay. What I have in my book is dated
16 April 2021. And it's the cover page for a set of
17 plans called construction documents for HVAC
18 replacement. And the Bates number is Encore
19 43-43.014. Is that what you have?

20 A. No, I do not.

21 Q. That might be a mistake between our two
22 books. Some kind of way what you got may not
23 look -- are you sure you're looking at Tab F5?

24 A. Yes. I've got Encore 040.

25 MR. WOLFF: I think my tab -- the

1 tab, what's behind it.

2 A. Yeah. And then this one says Encore
3 43.008.

4 BY MS. WOLF:

5 Q. Okay. The best I can tell that is --
6 seems like a mistake between our two books. So I
7 will skip on to something else. You don't have the
8 same tab --

9 MR. COX: Let me take a look at it
10 and see if I can help him out.

11 THE WITNESS: She is looking for the
12 cover page that's on this one. There,
13 that's their -- but it's not on that.

14 MS. WOLF: Michael, I sent over
15 yesterday a link, a share file link, that
16 has all of these documents in it
17 electronically. Did either one of you get
18 a chance to download it? Mr. Monheiser,
19 did you get a chance to download those
20 docs?

21 THE WITNESS: Yes, I did. I don't
22 have my computer open right now.

23 MS. WOLF: Okay. I think we are okay
24 for now, but maybe in a break, especially
25 when we take that 11:00 break, if you

1 could, you know, get your computer
2 running. I did send those documents just
3 for this kind of reason. Sometimes there
4 are little mistakes in what gets printed.
5 That way if we come across a document like
6 this, I might be able to have you pull up
7 and open the electronic version, if that's
8 okay.

9 THE WITNESS: Yeah.

10 MR. COX: Is that separate from the
11 printed out binders that we have? We have
12 two binders.

13 MS. WOLF: The electronic version is
14 a duplicate of the binders plus some
15 documents that were simply too big to
16 print.

17 MR. COX: Okay. Can you tell me --
18 just so we know it's not in these printed
19 binders, can you tell me what you're
20 looking for, and I'm going to look for it
21 real quick?

22 MS. WOLF: Yes. It is -- as a matter
23 fact, I might even be able to send this by
24 e-mail. But Tab F5 in my book is supposed
25 to be a set of plans called construction

1 documents prepared by ADG of the HVAC
2 replacement dated April 2021. And it is
3 Encore 43-43.014.

4 MR. COX: Our Tab 5 starts with
5 Encore 43.008.

6 MS. WOLF: Right. Yeah, I think
7 that -- it sounds like there's just a
8 mistake. Somebody printed the wrong thing
9 for your book. But it's not that big of
10 deal. I'll either e-mail it over to you,
11 or if Mr. Monheiser can turn his computer
12 on. I'll come back to it and ask him to
13 identify that document. I've made a note
14 of it.

15 BY MS. WOLF:

16 Q. So Mr. Monheiser, what we've been talking
17 about is all of the steps that are required for
18 Encore to get ready to actually do the work just in
19 general and in this project in particular. Is there
20 anything else that we haven't discussed already?

21 You know, we have discussed getting the
22 engineering design, getting the owner selections.
23 We discussed whether or not you might need the
24 authority having jurisdiction to -- you know, to get
25 a permit to start construction. You had to scope

1 the job. What else was missing or needed to be done
2 before Encore could start this particular project
3 for Eaux Holdings?

4 A. Subcontractors.

5 Q. Okay. And you were working on getting
6 subcontractors lined up to do the work?

7 A. Yes, ma'am.

8 Q. You were working on that from the time,
9 say, in September 2020 that you became involved in
10 this project?

11 A. Around that time, yes.

12 Q. Okay. And we can go through some of the
13 daily logs, which might prompt some of the
14 specifics.

15 A. Yeah.

16 Q. In general from September 2020 to the
17 time you contracted with the owner on December -- in
18 December 2020, during that timeframe, you were
19 working with the engineers, you were working to get
20 subs lined up, you were working to get the scope,
21 working to get the owner selections, the tenant
22 selections for what was going to go back in there.
23 We have talked about whether or not a permit was
24 required. Is there anything else in that list of
25 things that Encore needed to do before it could

1 actually enter into the contract and start the work?

2 A. I think -- generalized, I think you've
3 got everything covered.

4 Q. Okay. I think I know the answer but just
5 let me make sure. You -- did you know Joey Odom, or
6 have any involvement with any of his companies,
7 prior to this project in Hurricane Laura?

8 A. No.

9 Q. Had you done any work in Louisiana prior
10 to this particular project?

11 A. Not that I'm aware of. The past 3 years,
12 I'm not sure.

13 Q. You met with Joey Odom at some point to
14 discuss this project?

15 A. Pardon?

16 Q. Did you meet with Joey Odom at some point
17 to discuss this project?

18 A. Did I meet with him? Yes, multiple
19 times.

20 Q. Tell me about your first meeting with
21 Joey Odom. Where did y'all meet? Who was there?
22 Where did that occur?

23 A. I don't exactly know the date. He was --
24 he was carrying something either into the building,
25 or out of the building. And I didn't -- I didn't

1 know him, and I just introduced myself. I don't
2 know the exact dates, but it was -- it was maybe
3 mid-September. I'm not sure.

4 Q. When you --

5 A. That's my first encounter with him and it
6 only lasted about ten seconds, and he was busy.

7 Q. Okay. And at that point, had he already
8 engaged Encore to do the reconstruction work?

9 A. No. There was -- I think maybe one of my
10 trips that I started off down there. There was
11 still contractors stopping by to bid the job, I
12 think, you know. So he had -- he was not contracted
13 to us at all.

14 Q. So when you first met him in
15 mid-September, your understanding was at that point
16 Encore didn't -- had not been the favored one, or
17 chosen yet to do the job, and that the owner, Joey
18 Odom, was still entertaining different pricing bids?

19 MR. COX: Let me -- let me enter an
20 objection. And I'm objecting because of
21 the use favored one, it's a compound
22 question. If you could, please, rephrase
23 the question.

24 MS. WOLF: Yes, I'll rephrase.

25 BY MS. WOLF:

1 Q. So my question is. When you first met
2 Joey Odom in around mid-September, at that point
3 your understanding was that Encore was still working
4 on submitting a proposal or a bid to the owner, that
5 Encore had not yet been chosen by the owner to do
6 the restoration work?

7 A. Correct.

8 Q. Okay. What was your understanding of
9 what Encore needed to give the owner for the owner
10 to select Encore to do the work?

11 A. I guess -- I mean, I'm not sure what --
12 it depends on clients. They're all -- some of them,
13 it's a discussion, some of them it's a number.

14 Q. Were you asked to come up with a number
15 that Encore was going to charge to do a certain
16 scope of work?

17 A. I gave him a estimate of -- I gave him a
18 budgeted amount. I think -- I can't remember the
19 amounts, but it was -- I'd say the minimum would be
20 this, maximum would be that.

21 Q. Is that in writing?

22 A. No. They were just verbal.

23 Q. At that point, did you have an assessment
24 or written scope based on your walk throughs?

25 A. Yeah, I guess. Again, I don't know the

1 exact time. But, you know, I think I gave him -- it
2 was -- I can't remember that exact time whenever I
3 gave him that number.

4 Q. I guess so my question is. You verbally
5 gave Mr. Odom a range, a minimum and a maximum
6 amount, to do the work. That was tied to a specific
7 scope, right?

8 A. Yeah, it was. And was it -- not
9 specific. Because nothing is exactly specific.
10 It's a range because I did not know everything that
11 needed to happen at that point. I had a -- just a
12 summary, and a knowledge of costs of things, and
13 generalized cost of things and how they go together.

14 And so, again, I think it was a fairly
15 wide range. But, yeah, that's how I think I wrote
16 some items down. I may have even started estimating
17 it whenever I told him. I get all my components
18 into an estimate, you know, I can kind of give a
19 range.

20 Q. Okay. It's just something a little bit
21 funny with the sound system. You're clear. I'm
22 pretty sure you're talking clearly, but sometimes
23 the words get muffled. So I want to make sure I
24 understood what you said.

25 At the time that you gave Mr. Odom the

1 minimum and maximum range for this, did you have
2 some type of written scope?

3 A. I had component items that I had written
4 out.

5 Q. Okay. And have you produced that
6 document where you wrote out --

7 A. My estimate, yes.

8 Q. Your estimate. Where do we find the
9 estimate? What do you call that?

10 A. It's estimate. CSI code estimate,
11 formatted estimate. I'm not exactly. It may have
12 been maybe labeled Four-O estimate, client estimate.

13 Q. And was that -- your initial estimate,
14 the document where you started pulling all the
15 components together, did you base that on your own
16 site observations?

17 A. Yeah, and generalized input from the
18 owner.

19 Q. What input did you get from the owner?

20 A. Just generalized item, what he wanted to
21 go back with.

22 Q. Do you have any of that in writing, any
23 of the owners general input and what items he wanted
24 to go back with?

25 A. If I do, they are in the project folder.

1 But I'm -- I was right across the hall from his
2 office. So I would go over there and have general
3 discussions with him about this and just put it in
4 the computer.

5 Q. Okay. So you were working on site. You
6 had your computer. And you were getting input from
7 the owner, and from your own site assessments, to
8 start to come up with what these components were --

9 A. Yes.

10 Q. -- and what the scope of work was?

11 A. Yes.

12 Q. Did you meet with the first floor tenant
13 to get any input from them in order to determine
14 your initial estimate?

15 A. I don't remember that. At some point, I
16 did submit submittals to them. And maps of carpet
17 layout. And where everything was going back
18 together.

19 Q. Okay. And I believe I've seen those.
20 We'll get to your contract and there is a proposal
21 in there that includes a lot of that stuff. So it
22 sounds like it was sort of an iterative process of
23 continuous -- you know, continuous input of
24 information, and you refining your estimate?

25 A. Preliminary requirements, yes.

1 Q. Okay. And that process continued all the
2 way up to the point where you had \$1.36 million
3 number that was going to go in the contract?

4 A. Yes.

5 Q. And you have a -- do you have a list of
6 every -- all the scope of work that adds up to the
7 \$1.36 million?

8 A. That's -- it's, like, a couple of dollars
9 off. It's a round number. 1.36 is around number.

10 Q. Okay. But you have a document, your
11 estimate, when you've added up all the scope, and it
12 adds up to about \$1.36 million?

13 A. Yes, ma'am.

14 Q. Okay. So other than your site
15 assessments, and input from the owner, and I believe
16 you said you did talk to the first floor tenant at
17 some point and get their input about scope, right?

18 A. Yes. I didn't get their input. I
19 submitted a submittal.

20 Q. Okay.

21 A. And I think that's -- I gave them the
22 submittals and actually I may have asked for their
23 approval. The owner or myself did. I can't
24 remember how that exactly went down. But that
25 should be in writing.

1 Q. Did you use -- at any point did you get a
2 copy of Skyline damage estimate and use that at all
3 in your pricing?

4 A. I do have a copy of it. No, I -- I don't
5 use Xactimate to estimate jobs.

6 Q. Did you review the Skyline damage
7 estimate?

8 A. Partially, yeah. But I -- some of those
9 items are -- it's Xactimate format. It's not --
10 it's hard to use for larger jobs. So it's -- they
11 don't take any measurements. Xactimate doesn't
12 estimate a job the right way. So I don't really use
13 it.

14 Q. Okay. So if I asked you if you had
15 checked Skyline's scope and their prices, your
16 answer is no? You didn't verify the Skyline damage
17 estimate?

18 A. No.

19 Q. Okay. Did you ever walk the site with
20 anybody from Skyline?

21 A. Yes.

22 Q. Who did you walk with?

23 A. Jeff Major.

24 Q. How many times?

25 A. I can't remember.

1 Q. More than once?

2 A. Yes.

3 Q. More than a dozen?

4 A. No. I don't think so. I can't remember.

5 Q. I'm just trying to get, you know, a

6 ballpark. Do you think it was --

7 A. Yeah, I mean, I would say five times.

8 Q. Five times?

9 A. Just a, you know, as a general number.

10 Q. And when you walked the site with Jeff
11 Majors, how long were y'all together?

12 A. Twenty minutes maybe, ten minutes.
13 Probably varied depending on what we were looking
14 at.

15 Q. Okay. And what -- generally what were
16 those discussions? What was Jeff Majors -- what did
17 he -- what information did he want to convey to you
18 about this project?

19 A. He was asking me questions.

20 Q. Okay. And what were those questions?

21 A. Some items -- bringing some items up as
22 far as ceiling tiles. And a -- whenever I do review
23 an estimate, I may look at a cost of an item to make
24 sure that it's correct. And so ceiling tiles, I
25 know that was not a correct item. And so we were

1 going over just to look at the -- how to identify
2 the ceiling tiles and what they actually were so
3 that they could be correctly identified and scopes
4 of work.

5 Looking at identifying the panel numbers
6 on the back of the panels, looking at identifying
7 just general items, window components, you know,
8 those kinds of deals. And what actually goes on the
9 ultra or kind of reviewing the radio barriers that
10 are inside the building on the first floor.

11 Q. Can I interrupt for just a second?
12 Because you're using a lot of terminology that I
13 need to make sure I understand. When you were
14 talking about panels just now, were you talking
15 about electrical panels, or something else?

16 A. Yeah, the exterior panels.

17 Q. Oh, the exterior panels. Okay. And then
18 that last thing you just talking about on the first
19 floor, I think you used the word barrier?

20 A. It's an ultra -- it's a -- it's a -- it's
21 called a SCIF barrier. It's a frequency blocker
22 that DHS uses for protection of their equipment.

23 Q. Is that something on the windows, or the
24 walls, or what?

25 A. It's on the interior walls of the center

1 portion of the building.

2 Q. Okay. And I wanted to ask you about DHS,
3 the first floor tenant. Did they ask for anything
4 that was an upgrade from what they had, or were
5 they -- you know, I assume there is all kinds of
6 special items with security. And I saw the word
7 ballistic film, something on the windows. Was all
8 of that that the first floor tenant was asking for,
9 or that you needed as scope for the first floor
10 tenant, was it putting back exactly what they had,
11 or was there any of their scope where they wanted to
12 change something, or add something?

13 A. DHS?

14 Q. Yes.

15 A. I wouldn't have known that. It would
16 have come -- that would have come from the owner.

17 Q. Okay. So anything that DHS wanted that
18 was, you know, special for their requirements, the
19 owner gave you that, but you weren't privy to
20 whether or not it was something that was a
21 replacement in kind or an upgrade? Did I say that
22 right?

23 A. I think so. I think so. I understand
24 what you're saying.

25 Q. And so you are not able to say what, if

1 anything, went back in the first floor for the first
2 floor tenant that was an upgrade? You don't know?

3 A. I'm not sure.

4 Q. Okay. You did not track that?

5 A. No, I did not.

6 Q. Okay.

7 A. I had a base scope on their plans, the
8 original plans, that the owner had of the building.

9 Q. The owner had plans of what the first
10 floor -- are those the 2011 plans from a prior
11 renovation?

12 A. I think so. It sounds about right. I'm
13 not 100 percent sure.

14 Q. Is that what you based those the first
15 floor on, you went back with what was in those
16 plans?

17 A. Yes.

18 MS. WOLF: Michael, now is a good
19 time for a break.

20 MR. COX: Sure.

21 MS. WOLF: It's six minutes to 11:00,
22 which I think is when your status
23 conference is.

24 MR. COX: I had someone cover it, so
25 I'm fine. But we can take a break.

1 MS. WOLF: Yeah. How about if we
2 come back at five minutes after 11:00?

3 MR. COX: That sounds good. Taking a
4 break.

5 THE VIDEOGRAPHER: Going off the
6 record. The time is 10:54.

7 (OFF THE RECORD)

8 THE VIDEOGRAPHER: We are now on the
9 record. The time is 11:06.

10 BY MS. WOLF:

11 Q. Mr. Monheiser, I wanted to see if I can
12 share a screen with you. If you recall a little bit
13 earlier in your testimony, I wanted you to go to
14 what I thought was Tab F5, the HVAC replacement
15 documents that ADG prepared. But you didn't have
16 that document in front of you. So I'm going to
17 share my screen and see if you can see it. Okay. I
18 do not see the screen that I thought I checked.
19 What do y'all see?

20 MR. COX: Construction documents for
21 existing office building HVAC replacement.

22 MS. WOLF: Oh, good.

23 MR. COX: Dated April 2021.

24 MS. WOLF: All right. Excellent.

25 BY MS. WOLF:

1 Q. So back to that question that I had asked
2 you, Mr. Monheiser. This is Encore 43. This is the
3 first page. This is a set of plans for the HVAC
4 replacement, correct?

5 A. Yes. I think so.

6 Q. All right. And there's -- it's a stamped
7 set of plans. Do you see the stamp down in the
8 bottom right?

9 A. Yes, ma'am.

10 Q. All right. And this is the -- so this is
11 the final set, I believe, that we pulled from your
12 production that ADG prepared. You had contracted
13 with ADG to prepare this. And this is the upgraded
14 HVAC replacement system, correct?

15 A. Yes, ma'am.

16 Q. All right. And that means they were
17 finished with this work. With the design work, I'm
18 going to try to blow it up -- I don't know if y'all
19 can see it when I blow it up -- to get the date.
20 The actual date is April 1, 2020. Do you see that
21 on the stamp?

22 MR. COX: Where is the date?

23 BY MS. WOLF:

24 Q. Let me blow it up a little bit more. I
25 don't know if you can see my cursor. But down here

1 in the bottom right where the engineer stamps the
2 plans, he puts the date, April 1, 2021. Do you see
3 that?

4 A. Correct.

5 Q. All right. I also wanted to show you
6 what I think -- on the break I went and pulled an
7 estimate. Can you see my screen there, that says
8 Encore 13 up in the top right?

9 A. I can't see the 13. I just see -- yeah,
10 there you go. Yes.

11 Q. Okay. So this is -- it's a three-page
12 PDF, Encore 13-13.03. And I pulled it out of a
13 folder called estimates. Is that how you kept your
14 estimates in a folder called estimates?

15 A. Yes, ma'am.

16 Q. So I found this one document. That
17 doesn't mean there's not more there, because
18 obviously it was a short break. But this is what I
19 found, and it's dated June 25, 2021. So that was
20 just a few weeks ago, right, month before last?

21 A. Whenever you open it up, it automatically
22 updates.

23 Q. Okay. So when you opened it to convert
24 it to a PDF, or whatever, to produce it, that date
25 of June 25 got put on there automatically?

1 A. Yes.

2 Q. Are you able to say when you prepared
3 this document?

4 A. In probably -- I don't exactly know. It
5 was before -- it was before the -- before Christmas
6 of 2020. It was -- it was an evolving estimate.

7 Q. All right. And this -- what program do
8 you use to prepare your estimates?

9 A. I use a CSI coded format on Excel.

10 Q. All right. Is there more to the estimate
11 than what we see here? Is there -- are there
12 supporting documents? Are there other spreadsheets
13 were you input everything, or is this three-page
14 document the sum total of your estimate?

15 A. It's the sum total. There's a -- there
16 is drop down boxes for selection of items.

17 Q. Okay. And for the items that are going
18 to be done by all these subs, did you have written
19 proposals and quotes from all of them with the scope
20 and the cost?

21 A. Yes.

22 Q. Okay. And you have produced all of that?

23 A. Yeah. They were in these subcontractors
24 documents.

25 Q. Okay. Do you know if you had written

1 signed contracts with each subcontractor?

2 A. Yeah. We had signed -- we had a couple
3 of them. I think I had one that, you know, this
4 labor guy that was doing some cleaning that, you
5 know, just paid cash to. But, I mean, not really.
6 I think everybody should have a signed one.

7 Q. Okay. And so I'm looking at page 3 of
8 this estimate, Encore 13. And the total is
9 \$1,359,985.70, right?

10 A. Yes.

11 Q. And that was the basis for the written
12 contract that you entered into with the owner for
13 this project, right?

14 A. Correct.

15 Q. So everything that's listed on these
16 three pages is the scope for that cost, right?

17 A. Yes.

18 Q. So when you -- just in general when a
19 contractor issues an invoice, or a pay application,
20 you include a document that has the schedule of
21 values, right?

22 A. Typically.

23 Q. Typically, correct. And you did that for
24 this project, right? You submitted pay applications
25 that had the schedule of values listed, correct?

1 A. I did both. I submitted just a regular
2 invoice and a AIA formatted pay app.

3 Q. Okay. And we'll look at those in a
4 minute. The schedule of values, is that essentially
5 what we see here on the left, the breakdown under
6 general requirements, existing conditions, wood and
7 plastics, et cetera, that is the breakdown, or what
8 they call the schedule of values?

9 A. Yes.

10 Q. Okay. And that way you can track pay
11 application to pay application exactly what work has
12 been done, and what amount is owed for the work
13 that's been done, correct?

14 A. Not exactly. But in generalized, yes.

15 Q. Okay. Why not exactly?

16 A. I mean, nothing is an exact science.
17 It's not -- you know, say, this is what we have
18 done. Because when I'm submitting the invoice, the
19 work is already done. So I mean, it depends.
20 There's not a -- it depends on the work. And it
21 depends on if I'm planning on ordering something the
22 next day, those kinds of items. So it's not work
23 that's just been done. It's if I see something that
24 I'm going to submit, that I'm going to have a larger
25 expense for the next day, I may add that on there.

1 Q. Got it. So the not exact science part is
2 if you're talking about how much painting is done,
3 you estimate about 40 percent?

4 A. Yeah, you just -- throwing in a number.

5 Q. Right. So on this particular job, was
6 there anyone that came and verified Encore's work?
7 Meaning the amount that was actually -- the value of
8 the work actually done?

9 A. The owner.

10 Q. Okay. That was Joey Odom?

11 A. Yes, ma'am.

12 Q. So there was nobody with the lender who
13 came out and did site inspections, or checks, and
14 compared it to the payouts? Nobody from the lender
15 did that?

16 A. I don't know.

17 Q. Okay. And the engineers that you hired,
18 ADG, and BE-CI, they didn't have site observation
19 responsibility, right --

20 A. No.

21 Q. -- side, right?

22 A. Correct.

23 Q. And the -- how about city inspections?
24 Did you have to have any city inspections of the
25 work?

1 A. No.

2 Q. Okay. So other than Joey Odom, nobody
3 reviewed Encore's pay applications to verify the
4 amount of work done, and the cost that was being
5 assigned to that work?

6 A. I don't -- I don't know. That's -- I
7 submit it, he pays it or he doesn't.

8 Q. You submitted it and what? I'm sorry.

9 A. I said I submit it, and then he pays it
10 or he doesn't. You know, I don't know who verified
11 it.

12 Q. Okay. Did Encore do any work for any of
13 the other properties in Lake Charles owned by Joey
14 Odom, or any of his companies?

15 A. No.

16 Q. Did -- on this particular project, the
17 Eaux Holdings 620 Esplanade project, did the owner
18 handle or segregate out any of the work to handle
19 himself and take it out of Encore's scope?

20 A. Yes.

21 Q. Okay. What did the owner handle?

22 A. The roof.

23 Q. Anything else?

24 A. I -- probably a handful of items. I
25 can't remember.

1 Q. So the owner hired the roofing
2 subcontractor?

3 A. Correct.

4 Q. Does that mean that the owner was
5 essentially acting as general contractor for the
6 work?

7 A. I don't know.

8 Q. Do you know why the owner segregated out
9 the roof to handle that outside of Encore's scope?

10 A. I didn't -- we didn't want to do the
11 roof.

12 Q. Just to -- I just want to verify what you
13 said. Encore did not want to handle the roof?

14 A. Correct.

15 Q. Okay. Why is that?

16 A. Multitude -- or multiple things. It's
17 not the roof that was previously on the building.
18 And going to a local roofer is a lot better than
19 going through somebody who is coming out of town.
20 So we were always pushing toward, I guess, trying to
21 replace the roof as it -- as it was. It was given
22 maybe two days of discussion before Joey decided to
23 go with the local roofer. And so -- but our stance
24 was that we were going to do -- it we were going to
25 do it, we needed to do it the same way. And so the

1 roof that's on the building isn't the same roof that
2 was -- that it had before the storm.

3 Q. And do you consider the roof that went
4 back on the building to be an upgrade from what was
5 there?

6 A. It's cheaper.

7 Q. It's cheaper. Did it have any of the
8 components that were upgraded over what had been
9 there before?

10 A. No. It had -- they had less components.

11 Q. Did they add insulation to the roof
12 because it was a code requirement?

13 A. That's a broad question.

14 Q. Well at some point was the roof scope out
15 of your hands --

16 A. Yes.

17 Q. -- Encore's. So would it be fair to say
18 that exactly the decisions made, once Encore stepped
19 back and wasn't going to contract for the roof,
20 that -- would it be fair to say that you are not the
21 person to ask the questions to about this roof
22 compared to the one that was there before?

23 A. Correct.

24 Q. Okay. Is there some reason why Encore
25 couldn't hire a local roofer?

1 A. Again, it happened within, like, a two
2 day period, the owner just made that decision.

3 Q. Who made that decision?

4 A. The owner.

5 Q. Okay. You mentioned that Encore is a
6 Louisiana licensed contractor, right?

7 A. Correct.

8 Q. And you were aware that in Louisiana a
9 license is required for commercial work that exceeds
10 \$50,000 correct?

11 A. Correct.

12 Q. And you knew that before a contractor
13 could perform the work, and, in fact, before a
14 contractor could even bid or enter into a contract
15 for the work, that the contractor had to be
16 licensed, right?

17 A. Correct.

18 Q. So in this particular project, Encore
19 could not legally enter into a contract with the
20 owner for this project until after it obtained a
21 Louisiana license, correct?

22 A. Correct.

23 Q. I have, from the records that I looked
24 at, that Encore became licensed on November 19,
25 2020. Does that sound right? Is that correct?

1 A. Around that date.

2 Q. Okay. And you could produce your license
3 showing the date?

4 A. Yes.

5 Q. I have -- let me show you this. So this
6 is a letter that I obtained from the State Licensing
7 Board dated August 3 -- actually I think that's a
8 typo, I just it got a couple of days ago -- 2021.
9 It wasn't in 2020. So this was in response to a for
10 your request asking for your license. And if you
11 see down at the bullet point, it says Encore holds
12 commercial license 70948, which was issued on
13 November 19, 2020. Do you believe that to be a
14 correct statement by the licensing board?

15 A. I think so, yes.

16 Q. As a matter of fact, I'll ask you for a
17 copy of your certificate that the State Licensing
18 Board gives saying that you're licensed and showing
19 the date. I'll ask you for that, to produce it. Is
20 that all right?

21 A. That's fine.

22 Q. Okay.

23 MS. WOLF: I was going to offer,
24 file, and introduce this particular letter
25 in the record. But I think what I'm going

1 to do, because they put the wrong date on
2 the top, just to avoid any confusion, I am
3 going to ask them to submit a corrected
4 letter, and I'll send it over to you,
5 Michael. But I don't really want to
6 attach this one to this deposition because
7 I find that confusing. Even though he
8 looked at it -- if that's okay. Even
9 though he looked at it on the record -- I
10 mean, I'm okay with attaching it, if you
11 find that confusing. But I would prefer
12 to get a corrected letter. Do you have
13 any --

14 MR. COX: That's fine either way.

15 MR. WOLFF: Mary Anne --

16 MR. COX: We would stipulate that
17 that date is incorrect. I mean, it's
18 obviously.

19 MS. WOLF: All right. In that case,
20 let me do that and I'll just get a
21 corrected version and send that over after
22 the fact. But let me offer, file, and
23 introduce this August 3, it's supposed to
24 be 2021 letter that I got from the State
25 Licensing Board. Let me attach this as

1 Exhibit 1.

2 (EXHIBIT NO. 1 IDENTIFIED)

3 MR. COX: Okay. That's good.

4 MS. WOLF: And I will -- and just
5 logistically, Ms. Villien -- to you when
6 we're done.

7 [UPON AGREEMENT OF ALL COUNSEL,
8 MR. WOLFF'S UNINTENDED UN-MUTED
9 CONVERSATION ON UNRELATED TOPIC IS NOT
10 INCLUDED IN THIS RECORD]

11 MS. WOLF: John?

12 MR. WOLFF: Yeah.

13 MS. WOLF: We can hear you even
14 though you're muted.

15 MR. WOLFF: I wonder why.

16 MS. WOLF: I don't know. But your --
17 the symbol showed muted, and yet we could
18 hear everything you were saying.

19 MR. WOLFF: I fixed it. I apologize.

20 MS. WOLF: Okay. Thank you.

21 All right. So just to -- Ms.
22 Villien, do I just e-mail you this
23 document when we're done, and you attach
24 it as Exhibit 1?

25 COURT REPORTER: Yes, ma'am. That's

1 fine. I will put my e-mail in the chat,
2 if that's good for you.

3 MS. WOLF: Yes, that's good.

4 MR. WOLFF: And, Ms. Court Reporter,
5 anything I said, please don't include
6 that. That was not meant to be part of
7 the record. It was an off record
8 conversation with something unrelated. If
9 that's okay with you, Mike?

10 MR. COX: Yeah. Absolutely that's
11 okay.

12 MR. WOLFF: Thank you, sir.

13 COURT REPORTER: Ms. Mary Anne, I
14 assume that that's okay with you?

15 MS. WOLF: Absolutely.

16 COURT REPORTER: I just needed to
17 have everybody agree that it was to be
18 left off.

19 MS. WOLF: Correct.

20 BY MS. WOLF:

21 Q. Mr. Monheiser, you were forthcoming with
22 the owner about Encore's license status?

23 A. Pardon?

24 Q. Did you advise the owner of Encore's
25 license status in Louisiana?

1 A. Yes, ma'am.

2 Q. Okay. So the owner was aware of when you
3 got licensed --

4 A. Yes.

5 Q. -- and that you couldn't contract prior
6 to that point?

7 A. Yes.

8 Q. And what about Skyline? Were they aware
9 of your license status?

10 A. I -- I don't know.

11 Q. You do not?

12 A. I don't know.

13 Q. And, in fact, the date on Encore's
14 contract with the owner is December 20, 2020,
15 correct?

16 A. Yes. I think so.

17 Q. We can look at it. As a matter fact,
18 let's go first to the proposal which is Tab E1.
19 Tell me when you're there.

20 A. What would that be?

21 Q. Tab E1.

22 A. I don't have a Tab E. I've got a Tab E,
23 but it's blank. There's nothing in it.

24 Q. Okay. Then go to 1.

25 A. Nothing in it. I see a proposal. Is it

1 Encore 057?

2 Q. Yes. You have it?

3 A. Yes.

4 Q. Okay. So let's go ahead for the record
5 and state what we are looking at here is Encore's
6 proposal. It's Bates numbered Encore 57 through 57.
7 Well, actually hold on -- 57.14. All right. So
8 it's dated December 13, 2020, correct?

9 A. Yes.

10 Q. All right. And, in fact, that proposal
11 is after Encore became licensed, right?

12 A. Correct.

13 Q. At this point in December, mid-December,
14 you have come up with the contract price of
15 \$1.36 million, right? You see it in the middle of
16 the page?

17 A. Correct.

18 Q. And that's based on -- in your first
19 paragraph you say, it's based on the exterior plans
20 dated December 1, 2020, and interior design
21 submittals dated November 7, 2020, correct?

22 A. Correct.

23 Q. You have got a couple of -- you've got
24 three, actually, exhibits attached to the proposal
25 which identify the scope of work, right?

1 A. Yes.

2 Q. Okay. Well we can read it to make sure.

3 Exhibit A following this letter lists our

4 inclusions, exclusions, clarifications, and

5 assumptions. Exhibit B is a draft set of plans that

6 identifies our exterior working. And Exhibit C is a

7 list of interior selections and submittals. Right?

8 A. Yes.

9 Q. Mr. Monheiser, were you aware of -- well,
10 are you aware what RCV, or replacement cost value,
11 means in insurance coverage?

12 A. Not fully. I don't fully understand the
13 value.

14 Q. Okay. Did you have an understanding that
15 some of the insurance dollars were contingent upon
16 work actually being done and shown before the -- the
17 depreciation of the replacement cost value component
18 was owed?

19 A. Can you repeat that question?

20 Q. Yeah. Were you -- did you have any kind
21 of understanding that the insurance policy in this
22 particular case had a component, a replacement cost
23 component that --

24 A. Yes.

25 Q. -- the owner to do the work prior to

1 becoming entitled to payment for the work?

2 A. Yes.

3 Q. Meaning -- you understood that. Did you
4 have an understanding that Encore's documents, since
5 you were the one doing the work, would then be used
6 to submit to the insurance company to show that that
7 work was, in fact, done, and what the cost was?

8 A. I don't have contact with the insurance.
9 So, like, that's not my job. My contract is with
10 Joey Odom, Four-O.

11 Q. Okay. Well that's a question I didn't
12 ask, I don't think, but I need to ask that. Did you
13 have any communication -- did Encore, or anybody
14 with Encore, have direct communication with the
15 owner's insurance company related to this matter at
16 any time?

17 A. Not that I remember.

18 Q. Okay. Your communication was primarily
19 with whom on this project?

20 A. The owner.

21 Q. Joey Odom?

22 A. Yes, ma'am.

23 Q. And then the half a dozen or so times
24 that you talked to Jeff Major and walked the site
25 with him?

1 A. Yes, ma'am.

2 Q. Okay. That was actually site visits.
3 What about e-mails? Did you have any e-mails with
4 Skyline about this project?

5 A. Throughout at the beginning, yeah. But
6 the -- you know, maybe one or two throughout.

7 Q. Okay. And what about phone calls? How
8 often would you talk with Jeff Major, or anybody
9 with Skyline, about this -- throughout this entire
10 project?

11 A. Yeah, they were -- I mean, there were
12 phone calls.

13 Q. What was that?

14 A. I said, yes, there were phone calls.

15 Q. Okay. And do you know how many you had
16 with him?

17 A. No.

18 Q. Did you have any discussions with the
19 owner about tracking the information that was needed
20 to submit to the insurance company for the
21 replacement cost value?

22 A. Not that I remember.

23 Q. How about any kind of conversations like
24 that with Skyline?

25 A. I mean, materials, I guess, yeah. I

1 mean, those are always -- Jeff would ask about
2 material costs. So, yeah, those kind of items they
3 would ask.

4 Q. Meanings what you talked about before, as
5 an example, ceiling tile costs?

6 A. Yes, ma'am. Yes, ma'am.

7 Q. Was the general purpose of those
8 communications, was Jeff Majors trying to track the
9 cost to see if, you know, if costs were high, or
10 just what they were? Do you know why he was asking
11 those questions?

12 A. Because his -- it all comes down to
13 Xactimate. Xactimate pricing is incorrect.

14 Q. Was it your understanding that he was
15 using the data -- or the pricing that y'all talked
16 about to create his Xactimate estimate, or had it
17 already been done and he was curious to see if it --
18 you know, how the prices compared to reality?

19 A. I'm not sure whenever his estimate was
20 done or his survey was done.

21 Q. Okay. Who determined if something that
22 was going back in scope -- in your scope was a
23 replacement in kind, or improvement? Did you have
24 any obligations to make those kind of decisions?

25 A. No.

1 MR. WOLFF: Mary Anne, do you want to
2 stop share on that document?

3 MS. WOLF: Sure. All right. So do
4 y'all see anything? Did I stop it?

5 MR. COX: We still see the State of
6 Louisiana document.

7 MR. WOLFF: Look on the bottom bar
8 where -- next to chat.

9 MS. WOLF: Okay.

10 MR. WOLFF: And it should say stop
11 share.

12 MS. WOLF: It says new share. I see
13 it. Okay. Thank you. Is that better?

14 BY MS. WOLF:

15 Q. Just to give me an idea of where you are
16 in the process. Is the first floor -- let me ask it
17 this way. Is Encore's contract with the owner
18 completed, or you're still doing work out there?

19 A. I guess we are -- we are still doing work
20 out there, yes.

21 Q. Is it more than the BE-CI window
22 component? Is there more going on than the window
23 replacement?

24 A. Yeah. I mean, little items. And more
25 specific to tenant issues than anything else that

1 would be required.

2 Q. Okay. So I heard you say window
3 replacement and then little items tenant related.
4 So can we be specific? On the first floor, what
5 remains to be done for Encore?

6 A. That's -- nothing on the first floor.

7 Q. Okay. So you're done?

8 A. Yes.

9 Q. And it's been accepted by the tenant and
10 by the owner, correct?

11 A. Correct.

12 Q. When did that -- was there some kind of
13 acceptance, or substantial certificate document, or
14 anything to document the date when it was done?

15 A. That would -- yes, I think so, and the
16 owner would have that.

17 Q. What would the owner have?

18 A. I don't know. A document saying they are
19 paying rent, or something of that sort.

20 Q. Okay. There's a certificate of occupancy
21 that's been issued for the first floor?

22 A. Yes.

23 Q. Okay. And everything on the punch list
24 for the first floor is completed?

25 A. Yes.

1 Q. So --

2 A. I think so.

3 Q. Has Encore been paid in full, then, for
4 the first floor work, or how did you break that up?

5 A. I didn't exactly break it up into floor.
6 It's by trade. It's by division.

7 Q. Okay. So what remains to be done on the
8 second floor?

9 A. That's tenant specific items.

10 Q. Okay. And what tenant? Is there a
11 particular tenant that you're working towards to get
12 back in there?

13 A. I don't know. It's just a specific --
14 there are specific tenant items. I don't --
15 whatever, or whoever, becomes a tenant, up there.
16 They're just tenant specific items, like, how the
17 kitchen is set up, data cables, those kinds of
18 items.

19 Q. Okay. Has Encore been provided with a
20 set of plans and/or specifications showing how to
21 layout the second floor?

22 A. I've created variable amounts of sketches
23 for the second floor. We have some possible
24 additions, I think, from an architect for an
25 addition of a bathroom.

1 Q. Okay. So let me clarify. This is
2 outside of Encore's original contract scope, the
3 1.36 million didn't include actually finishing out
4 the second tenant space for a particular tenant, or
5 did it?

6 A. It did. It just -- there was no tenant
7 up there to begin with.

8 Q. Right.

9 A. So, again, giving a generalized number to
10 it. Yeah, you know, usually whenever you have a
11 tenant, there's specific tenant finishes, unless
12 it's an emergency.

13 Q. Okay. So now I'm a little a bit
14 confused. So let me see. Did you have an amount of
15 money in the \$1.36 million to do walls and finish
16 out scope for the second floor?

17 A. Yes.

18 Q. Okay. And was that a -- was it set aside
19 as an allowance, or a contingency, or what?

20 A. It was set -- I mean, in the -- you know,
21 hanging up sheetrock, insulation, all those things,
22 those were -- those were finishes. It's really
23 small items. Like, I guess you could say that
24 the -- how the kitchen or the break room is going to
25 be set up. That's a tenant specific item. They may

1 want it set up a different way. Or where they want
2 their data cables to be ran. Do they -- are they
3 going off of a mainline, or are they going off of
4 servers? Is there going to be a server room? If
5 there is a server room, there's a dedicated HVAC
6 system for that server room. So on and so forth.
7 So there are specific items that I don't want to --
8 we don't want to do unless there is a tenant
9 specifying it.

10 Q. But you're saying there's an allowance in
11 the \$1.36 million to do those tenant specific items?

12 A. Some of them, yes.

13 Q. Okay. But as of right now, you are not
14 doing that actual work because you haven't been
15 given the specific information you need to finish
16 the second floor; is that right?

17 A. Yeah.

18 Q. Okay. Does that mean that Encore's
19 contract is just open? You have the obligation to
20 go back to the second floor and finish it out for a
21 specific tenant at some point in time when they get
22 one?

23 A. Yeah. In a way, yes. But again, going
24 throughout the window process, we will still be
25 here, so.

1 Q. Okay. Have you talked to any specific
2 prospective second floor tenants?

3 A. I think -- I have talked to a couple
4 of -- yeah, one of them.

5 Q. Who is it?

6 A. I can't -- I can't remember. They are
7 all government agencies that I've -- that has been
8 going up there. I met with one in specific. I
9 can't remember their title.

10 Q. When you say government agencies, state
11 government agency?

12 A. I'm not sure.

13 Q. Okay. Did you speak directly with
14 anybody with this prospective tenant when they went
15 to the second floor, or came to see it?

16 A. Can you repeat that question?

17 Q. Yes. Have you talked to anybody who is a
18 prospective tenant for the second floor? Have you
19 personally and directly talked to any prospective --

20 A. Yes.

21 Q. Okay. And you can only think of one
22 right now, or more?

23 A. That I have actually had a personal
24 conversations with, yes.

25 Q. Okay. And did you get a business card or

1 e-mail with the name of anybody on it?

2 A. No. I think a lot of that went through
3 Andrew.

4 Q. Andrew Vanchiere?

5 A. Actually I don't know his last name.

6 Q. With Latter & Blum?

7 A. I just know his name is Andrew. He was
8 the guy that handled Joey's leasing stuff.

9 Q. Okay. A Latter & Blum realtor?

10 A. Maybe.

11 Q. Okay. His first name is Andrew, and
12 that's what you know --

13 A. Yes.

14 Q. -- and that he handles Mr. Odom's
15 leasing?

16 A. Yes.

17 Q. Okay. Were you involved in any
18 conversations where there was a discussion about
19 losing any prospective tenants for the second floor
20 for any reason?

21 A. This was in passing. I don't know
22 specific details.

23 Q. Okay. What do you -- what did you hear
24 in passing?

25 A. Just about trying to get that second

1 floor finished. There was questions asked, like,
2 how quickly could you do it? And then, again, kind
3 of relating it just in passing conversations and
4 people visiting the job and walking upstairs.

5 Q. And the work you're talking about is
6 what, the air-conditioning replacement?

7 A. No. It's -- I mean, it's drywall. It's
8 everything. A lot of these discussions happened at
9 the very beginning of the job even before I was --
10 had a signed contract.

11 Q. Okay. So before you had the signed
12 contract?

13 A. There were people going in and out of
14 that second floor.

15 Q. And just so that I understand this
16 correctly. What you are saying is, that you can't
17 actually finish the second floor with the tenant
18 specific items until there is a tenant? Because
19 they tell you what it is they want with all those
20 things that you mentioned, where they want the
21 server room? How many offices? How do they want
22 the break room? So you have to have the tenant to
23 finish it, right?

24 A. In a way, yes. Usually whenever you have
25 a 27,000 square-foot building, and you've got a

1 tenant that's usually -- I mean, there's got to be
2 15, people -- 15, 20 people. You usually try and do
3 some sort of specific tenant finish for that, yes.

4 Q. Okay. So is there any work that you can
5 do that you need to do, or can do, right now on the
6 second floor without a specific tenant? Because
7 you've already said, I can't do the tenant specific
8 until there's a tenant. And the HVAC work is
9 underway, right, the improvements to the HVAC
10 system?

11 A. No. That's not being done on the second
12 floor right now.

13 Q. Okay. So there's no HVAC improvements
14 going on on the second floor?

15 A. Correct.

16 Q. Is that still in discussion?

17 A. Yes.

18 Q. Okay. Is that the floor that had
19 something, like, 17 air handler -- air handling
20 units running off of one condenser?

21 A. The entire building was going off of --
22 not technically a condenser. There's two units that
23 run the refrigerant. But there's 18 -- I think when
24 I got there, 18 or 19 air handling units that were
25 running off of a condensing unit.

1 Q. Okay. And did ADG, the engineer,
2 recommend that that be -- the second floor HVAC
3 system be replaced, for that or any other reason?

4 A. No. I mean, it's a -- it's a precursor
5 to mini split units. It's a -- the system works
6 fine. There was a couple of air handling units that
7 had some issue. But I mean, the compressor worked
8 fine.

9 Q. Is there currently under consideration
10 the option to replace the HVAC system on the second
11 floor just like was done on the first floor? Is
12 that currently being considered?

13 A. Yes.

14 Q. Do you know where the first floor
15 tenant -- we've been saying DHS, I think that's
16 Department of Homeland Security, or GSA, Government
17 Security Administration -- I'm guessing at these
18 acronyms. Do you know what they mean, DHS?

19 A. Yeah, the Department of Homeland
20 Security. GSA, I'm not sure.

21 Q. Okay. That is a first floor tenant that
22 was in there when Hurricane Laura hit, right?

23 A. One of those -- yeah, one of those two.

24 Q. Do you know where they moved? They had
25 to move out of the building because of damage from

1 the hurricane; is that right?

2 A. Yes.

3 Q. Do you know where they went?

4 A. No clue.

5 Q. Let me go back to this proposal that we
6 were looking at. Again that's Encore 57 through
7 57.14 for the record. This proposal was
8 incorporated into, and became part of, Encore's
9 contract with the owner, right?

10 A. Yes.

11 Q. If you look at Part 8, it says, if owner
12 terminates the work after commencement of the 620
13 Esplanade Plaza Building -- are you with me?

14 A. Yep.

15 Q. Encore shall be paid an amount calculated
16 as follows. Take the cost of the work incurred plus
17 a reasonable cost to stop and demobilize the work,
18 add the fixed fee of 20 percent. I read that
19 correctly?

20 A. Yes.

21 Q. All right. So the owner had a
22 termination provision in its contract with Encore
23 that allowed it to terminate for any reason, right?

24 A. Correct.

25 Q. And if the owner were to terminate the

1 contract, the owner would not have to pay the entire
2 \$1.36 million, right, unless that's the amount of
3 work that was done, correct?

4 A. Possibly.

5 Q. So let's say if the owner terminated this
6 contract, you would take the cost of the work
7 incurred, that would be the amount of work that
8 Encore had done up to the point of termination,
9 right?

10 A. Yes.

11 Q. And then you would determine a reasonable
12 cost to stop and demobilize, and I'm assuming Encore
13 would then present the owner with a bill saying this
14 is how much it cost us to demobilize, right?

15 A. Correct.

16 Q. Any idea what that number would be?

17 A. Not off the top of my head right now.

18 Q. Okay. And then you add a fixed fee of
19 20 percent. So 20 percent of what?

20 A. That's overhead profit.

21 Q. What's that?

22 A. Overhead profit ten and ten.

23 Q. Okay. So you would take the cost of the
24 work and add 20 percent for Encore's overhead and
25 profit?

1 A. Correct.

2 Q. Okay. So the owner would have to pay for
3 the work done to date, and then pay a cost to
4 demobilize, if the owner had terminated this
5 contract, right?

6 A. Correct.

7 Q. In Section 11 it talks about a \$50,000
8 contingency sum, and actually itemizes the things
9 that that can be used for.

10 A. It's not specifically itemizing, it's
11 guesstimating. It's a guess of what items it can be
12 used for.

13 Q. Okay. Did Encore use all of that \$50,000
14 contingency in this project?

15 A. I'm not sure.

16 Q. Okay. And then if you look down where it
17 says, funds from the construction contingency -- do
18 you see where I'm reading?

19 A. Yes, ma'am.

20 Q. Are not expected to be available for the
21 following items, which will be reimbursed out of the
22 overall project contingency. Is that overall
23 project contingency a separate pot of money separate
24 from the 50,000?

25 A. No. It's the same 50,000.

1 Q. Okay. So there weren't two contingency
2 funds, it was --

3 A. No.

4 Q. -- one contingency fund?

5 All right. Let's move on to look at the
6 contract, which is your Tab E2. Tell me when you
7 get there.

8 A. Okay.

9 Q. All right. So for the record, we are
10 looking at something that's entitled construction
11 contract. It is Bates numbered Encore 55 through
12 55.08. Go ahead and look at the last page for me,
13 which is page 8 of 8. This contract is signed by
14 Joey Odom a member of Eaux Holdings, LLC, correct?

15 A. Correct.

16 Q. And signed -- that would be your
17 signature Evan --

18 A. Yes.

19 Q. -- for Encore, correct?

20 A. Yes.

21 Q. The date of the contract is December 20,
22 2020, correct?

23 A. Correct.

24 Q. And the next paragraph is where it states
25 that Exhibit A, the proposal, is incorporated into

1 this contract. Do you see that?

2 A. Yes.

3 Q. Okay. Let's look at Section 1,
4 contractor's work. It says.

5 Contractor shall perform all work and
6 shall furnish all supervision, labor, materials,
7 equipment, supplies, and all other things necessary
8 for the completion of the work described in Exhibit
9 A, and work incidental thereto in strict accordance
10 with manufacturer specifications, applicable codes,
11 and regulations, and the terms of this contract to
12 the satisfaction of the owner.

13 I read that correctly?

14 A. Yes.

15 Q. That was Encore's obligation under this
16 contract, correct?

17 A. Yes.

18 Q. And other than the items that you have
19 explained to us that are remaining, is it your
20 testimony that Encore has, in fact, complied with
21 this section?

22 A. To the best of my knowledge.

23 Q. Okay. Let's look at Section 3, the
24 contract sum. We've already mentioned it before.
25 The agreement was for Encore to do the scope of work

1 for \$1,360,000. Correct?

2 A. Sorry. You kind of got muffled there for
3 a second. I couldn't --

4 Q. Okay. Let's look at section three, the
5 contract sum.

6 A. Yes.

7 Q. The contract sum for this project was
8 \$1,360,000. Correct?

9 A. Yes.

10 Q. All right. And let's look at payments.
11 So the first payment, initial payment, is seven days
12 after execution of this contract, and the owner is
13 to pay Encore \$100,000. Correct?

14 A. The amount of \$100,000.

15 Q. I'm sorry, maybe -- did I say that wrong?

16 A. I heard 400.

17 Q. I think I said 100,000.

18 A. Yes. Yes. 100,000.

19 Q. And the owner, in fact, paid that, right?

20 A. Yes.

21 Q. All right. And then next is a progress
22 payment of 250,000 will be made by the owner to the
23 contractor 30 days after the initial payment is due.
24 Do you see that?

25 A. Correct.

1 Q. All right. So that's the progress
2 payment. And the owner did, in fact, make that
3 payment, correct?

4 A. Correct.

5 Q. And then the next section is 3.2.2 which
6 is the final payment. And the final payment, which
7 is the contract sum plus any change orders, and less
8 the initial payment, and less the progress payment,
9 subject to holdings permitted hereunder shall be due
10 within 30 days of the last of the following to
11 occur. So there are four items there. One, the
12 final written approval of the work performed has
13 been provided by the owner, right?

14 A. Correct.

15 Q. Number two, the contractor has fulfilled
16 the requirements of Section 12.2 of this contract
17 which is the lien release section. You can look at,
18 if you'd like to to verify that. That's correct?

19 A. Yes.

20 Q. And number three, the contractor has
21 provided owner with any and all written manufacturer
22 warranties, correct?

23 A. Correct.

24 Q. And number four, the owner has received
25 total payments for depreciation held by the

1 insurance company, right?

2 A. Correct.

3 Q. So these were -- this was a specific
4 provision written into Encore's contract with the
5 owner, right?

6 A. Correct.

7 Q. The final payment doesn't happen until
8 after all four of these items are done, right?

9 A. Yes.

10 Q. Did Encore have any separate written
11 agreements with the owner outside of this proposal
12 and this contract, and, of course, the written
13 change orders which you have produced? Is there any
14 other separate agreement related to payment, or is
15 this it?

16 A. That -- that's it.

17 Q. Okay. So you've gotten final written
18 approval of the work from the owner for the first
19 floor?

20 A. Correct.

21 Q. Not the second floor, and not the
22 exterior, right?

23 A. Correct.

24 Q. And have you given a lien release at this
25 point?